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**Cc:** Dyson, Paul[paul.dyson@standardandpoors.com]  
**From:** Weil, Chloe  
**Sent:** Fri 3/11/2016 2:23:10 AM  
**Subject:** S&P Review of Westlands Water District  
[Series 2013 San Luis Westlands Water District - S&P Rating Report.pdf](#)  
[Standard and Poors Revised Water Sewer Criteria Jan 19 2016.pdf](#)  
[S&P Pre-Mtg Memo Westlands Water District.pdf](#)

Good evening Bobbie -

As I previously indicated, we will be working on a full review of the rating on the District's revenue bonds as a result of yesterday's SEC enforcement action. We last conducted a full review of the District in relation to the May 2013 issuance by the San Luis & Delta-Mendota Water Authority of the series 2013A bonds.

I am attaching our rating report from 2013 as a point of reference, and I am sending an attached list of key questions for your consideration to help expedite our credit review. As you can see, the bulk of our questions relate to the accounting treatment of the adjustments made in 2010 and 2012, and making sure we understand each of the revenue items in the fiscal 2015 audit - but we are also focused on the District's financial projections over the next five years.

We are hoping to schedule a meeting with the District (either in person or by phone) on March 18<sup>th</sup> or 21<sup>st</sup> to give us enough time to finalize the rating by March 25<sup>th</sup>. We will wait to hear from you for which date works best for the District.

Finally, I am also including a copy of our new water/sewer criteria that we released in January.

Regards,

Chloe



**Chloe Weil**

Director, U.S. Public Finance Infrastructure Group

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**From:** Brown, Douglas S. [mailto:DBROWN@SYCR.com]  
**Sent:** Thursday, March 10, 2016 1:01 PM  
**To:** Weil, Chloe (Analytical)  
**Cc:** Bobbie Ormonde  
**Subject:** WWD

Chloe,

Per our conversation:

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## **Memorandum**

### **Discussion Points – Surveillance Review of Westlands Water District**

#### **Analyst Contacts:**

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Paul Dyson – (415) 371-5079

#### **Information Requests**

- Documentation of the accounting transactions in fiscals 2010 and 2012 referenced in the SEC enforcement action dated March 9, 2016.
- The memos provided to Westlands' auditor in November 2009 describing the proposal to "reclassify cash reserves or retained earnings" to record additional revenue "in lieu of collecting current revenue while maintaining the required debt coverage ratio" as well as any memos to the auditor regarding the 2012 adjustment.
- Draft fiscal 2016 audit and fiscal 2017 operating budget, if available.
- Latest full debt service schedule (including the districts' subordinate lien debt service and loans and any off-balance sheet debt) from fiscal 2015 onwards including LOC fees.
- Latest swap mark-to-market.
- Latest rate study, 5-year financial projections and 5-year CIP.
- Latest month-end unrestricted cash and investment balance.

#### **Financials**

- We understand that the District's total operating revenues increased by 4% on a year-over-year basis between fiscals 2014 and 2015 despite a reduction in water sales. Can you please walk us through the District's rate structure and the offsetting revenues so we can better understand why operating revenues did not decline in tandem with water sales?
- Can you please provide a historical summary of the accounting treatment for the District's water sales revenues – please provide a cross-walk of the District's water rates and charges to the "Irrigation Water Sales" line item in the income statement - including revenues collected through (1) base rates and (2) land-based charges over the past 5 years.
- Why are the "cash receipts from water sales and related activities" in the cash flow statement so much higher (\$162.6 million) than the total operating revenues (\$124.3 million) in fiscal 2015?
- The fiscal 2015 audit lists \$13.1 million in non-operating revenue for "COP Repayment" - what is this for?
- We understand that the District's non-operating revenue increased 175% on a year-over-year basis, including a \$20.1 million gain on the sale of land. What was the land sale for?
- Are the District's cash receipts for land sales restricted or may they be used to fund operations?

- The fiscal 2015 audit indicates that the District's management believes that there is a potential uncollectible account for the year ended February 28, 2015. Accordingly, an allowance for doubtful accounts has been recorded in these financial statements. Can you elaborate on what this is for?
- We understand that in fiscal 2010 the District reclassified certain assets by credited customers' accounts and treated these assets as revenues. Is this the only year that this action occurred, or did this practice continue through fiscal 2015? Was this reclassification for pre-paid water costs, or other assets?
- To help us understand the reclassification of assets, please provide the balances for the District's pre-paid water costs at fiscal year-end for fiscals 2010 – 2015.
- We also understand that the District capitalized some of the cost of the preliminary costs associated with BDCP/Water Fix while in other years these expenses have been expensed. Can you please provide a summary of spending to date on Delta-related planning, and the dollar amount of costs capitalized or expensed over the past five years?
- Note D of the audit mentions that "Interest in water project represents the District's participation in the San Luis Delta-Mendota Authority's (SLDMWA) funding of the Department of Water Resources (DWR) water project that will increase the reliability of the District's water supply. If the project moves forward, DWR intends to issue bonds for financing. The project would provide a future benefit to the District." Is this related to the BDCP/Water Fix or other projects?
- Note F states "The District holds a promissory note secured by real property on a loan made to a management level employee. The notes' terms provides for principal and interest payments to be made on a semi-monthly basis and is due in full on or before August 31, 2021. At February 28, 2015, the balance due is \$1,456,687." What is this for?
- Note R indicates that \$342,826,021 in unpaid CVP capital was reflected on Reclamation's accounting records as the District's future capital obligations as of September 30, 2013, and this amount has not been accrued as an obligation on the District's financial statements. Is this obligation funded through the water rates or through a separate charge?
- Is there any off balance sheet debt? Direct purchase debt?

### **Legal/Environmental/Regulatory**

- Please provide a summary regarding the settlement of the drainage lawsuit.
- Please provide a status update on the interim renewal water service contract with the Bureau of Reclamation.
- Please provide an update on land subsidence within the service area. What measures are being taken within the region to address this concern?
- Is the District aware of any pending regulatory or environmental actions against it?

### **Operations**

- Does the District have a best case/worst case forecast for water supply and demand for the next couple years? Beyond 2017?
- What future rate increases are projected?
- What long-term water supply acquisitions are currently envisioned? How will these projects be funded?
- Does the District have a formal asset management program?
- What is the approximate percentage of non-revenue water from the system?

- Has the District performed any vulnerability assessments of its infrastructure (i.e., potential system impacts from climate change, natural disasters, man-made disasters, etc.)?
- Have there been any service interruptions during the past year?
- Have there been any fines or penalties during the past year?

### **Capital Improvement Program**

- How often is the CIP reviewed and updated?
- Does the District plan to issue any additional debt within the next 5 years?
- How is the District forecasting its share of Water Fix costs? What assumptions does the District utilize to forecast the impact of Water Fix on the customer base?

### **Planning and Policies**

- How often does the District review and update its long-term financial projections?
- Does the District have a formal succession plan for key staff?
- Does the District track intra-year budget vs. actuals and disclose it? If so, how often are they disclosed?

### **Miscellaneous**

- Is the District aware of any pending or threatened litigation against it?
- Is there any other information that the District believes Standard & Poor's should be aware of that has not already been discussed as part of this review?

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## Criteria | Governments | U.S. Public Finance: U.S. Public Finance Waterworks, Sanitary Sewer, And Drainage Utility Systems: Rating Methodology And Assumptions

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## Criteria I Governments I U.S. Public Finance:

# U.S. Public Finance Waterworks, Sanitary Sewer, And Drainage Utility Systems: Rating Methodology And Assumptions

1. Standard & Poor's Ratings Services is updating its methodology for assigning issue credit ratings, issuer credit ratings (ICRs), and ratings derived from stand-alone credit profiles (SACPs) based on waterworks, sanitary sewer, and drainage utility revenue pledges of local and regional governments (LRGs) and irrigation districts in the U.S. This follows the publication of "Request for Comment: U.S. Public Finance Waterworks, Sanitary Sewer, And Drainage Utility Systems: Methodology And Assumptions", on Dec. 10, 2014. These criteria supersede the following articles:
  - Standard & Poor's Revises Criteria For Rating Water, Sewer, And Drainage Utility Revenue Bonds (Sept. 15, 2008);
  - Key Water And Sewer Utility Credit Ratio Ranges (Sept. 15, 2008); and
  - Water And Sewer Ratings (June 25, 2007).
2. This article is related to our criteria article "Principles Of Credit Ratings", published on Feb. 16, 2011.
3. This update provides additional transparency and comparability to help market participants better understand our approach in assigning ratings to U.S. public finance waterworks, sanitary sewer, and drainage utility systems, to enhance the forward-looking nature of these ratings, and to enhance the global comparability of our ratings through a clear, comprehensive, and globally consistent criteria framework.
4. All terms followed by an asterisk (\*) are defined in the glossary in Appendix I. "Sewer", "sanitary sewer", and "wastewater" are assumed to be interchangeable terms. Similarly, "drainage", "stormwater", and "storm sewer" are also deemed to be interchangeable terms.

## I. SCOPE OF THE CRITERIA

5. The criteria apply to all issue credit ratings, ICRs, and SACPs assigned to waterworks, sanitary sewer, and drainage utility systems of a U.S. municipality or comparable political subdivision, including irrigation districts, whose financial obligations are secured by a pledge of revenues. We have observed that these utilities primarily rely on user charges for the ongoing operations of drinking and/or raw-water sales, sanitary sewer collection and/or treatment, and/or storm drainage systems, or some combination thereof, directly to the end (retail) customer. The public or municipal enterprises within the scope of this criteria include, generally, those with the following characteristics:
  - The entity is a political subdivision or a wholly-owned department of a political subdivision, even if there is a concession agreement with a private operator;
  - The entity has a public policy-making role, mission, or mandate to deliver an essential service deemed necessary for public health, and is not a commercial entity such as an investor-owned utility or a corporation (whether a bankruptcy-remote or single-purpose entity or not);
  - The entity primarily relies upon user charges and has ongoing cash from operations, and has at most minimal or

immaterial contractual payments or appropriations from a related political subdivision such as the general fund of the LRG; and

- The entity is not registered as a commercial enterprise or public corporation and does not pay dividends (other than to its affiliated general government), establish ownership shares, or access the equity markets.
6. While not an exhaustive list, examples of debt rated under these criteria are utility revenue bonds issued by a city, utility board, retail raw-water service providers such as irrigation districts, or regional authority that provides primarily retail water and sewer service. Examples of entities that are not rated under these criteria include investor-owned utilities, master limited partnerships, and limited liability corporations. Investor-owned utilities and corporations are rated using "Corporate Methodology", published Nov. 19, 2013, and "Key Credit Factors For The Regulated Utilities Industry", published Nov. 19, 2013. Master limited partnerships are rated based on "Methodology: Master Limited Partnerships And General Partnerships", published Sept. 22, 2014. If we believe that the contributions from the LRG or related taxing entity could significantly change the utility's financial condition, it would also fall outside the scope of these criteria.
  7. Entities whose revenues are derived entirely from sales for resale to other entities, such as traditional wholesale providers or joint action agencies, will continue to be evaluated based on the "Wholesale Utilities" criteria, published May 24, 2005. An LRG often also owns and/or operates other enterprises such as electric systems, gas distribution utilities, solid waste systems, or other utility services. While many of the themes addressed below also apply in part to those other enterprises, Standard & Poor's addresses rating criteria and methodology specifically and separately for those enterprises.
  8. Many LRGs issue general obligation (GO) or other tax-secured debt\* on behalf of the utility or the utility has the legal authority to issue it itself; in those cases, the applicable GO or special tax rating criteria and methodology will continue to be applicable. When more than one type of revenue secures the debt, we apply our criteria, "Methodology: Rating Approach To Obligations With Multiple Revenue Streams", published Nov. 29, 2011, to determine the rating approach.
  9. U.S. municipal utilities generally operate as either a department of an LRG or are themselves an LRG. We generally do not believe that the utilities benefit from an explicit or implicit level of extraordinary support from the U.S. federal government or state government in which the utility operates in case of distress. Therefore, very few of them are deemed a government-related entity (GRE). For those few rated utilities that are deemed to be a GRE, these criteria are used to determine the SACP, which is used as an input to the GRE criteria (see "Rating Government-Related Entities: Methodology And Assumptions", published March 25, 2015) to arrive at an ICR.
  10. We consider the strength of lease revenue or certificates of participation issued by utilities to be equivalent to a pledge of the same lien of revenues. There is, therefore, generally no rating distinction on these securities, reflecting the enterprise nature of public utilities. If a utility were to issue appropriation-secured debt that did not meet the above assumptions, we would apply our criteria "Appropriation-Backed Obligations", published June 13, 2007.
  11. Legal provisions, in our view, covenant the utilities to act—or not take action—in a manner that provides at least some minimal protections for the benefit of bondholders. As discussed further in paragraphs 112 and 113, we view legal provisions as generally being either credit-neutral or credit-negative. However, the complete absence of any document such as an indenture or bond resolution, or silence by existing related documents toward establishing an orderly flow

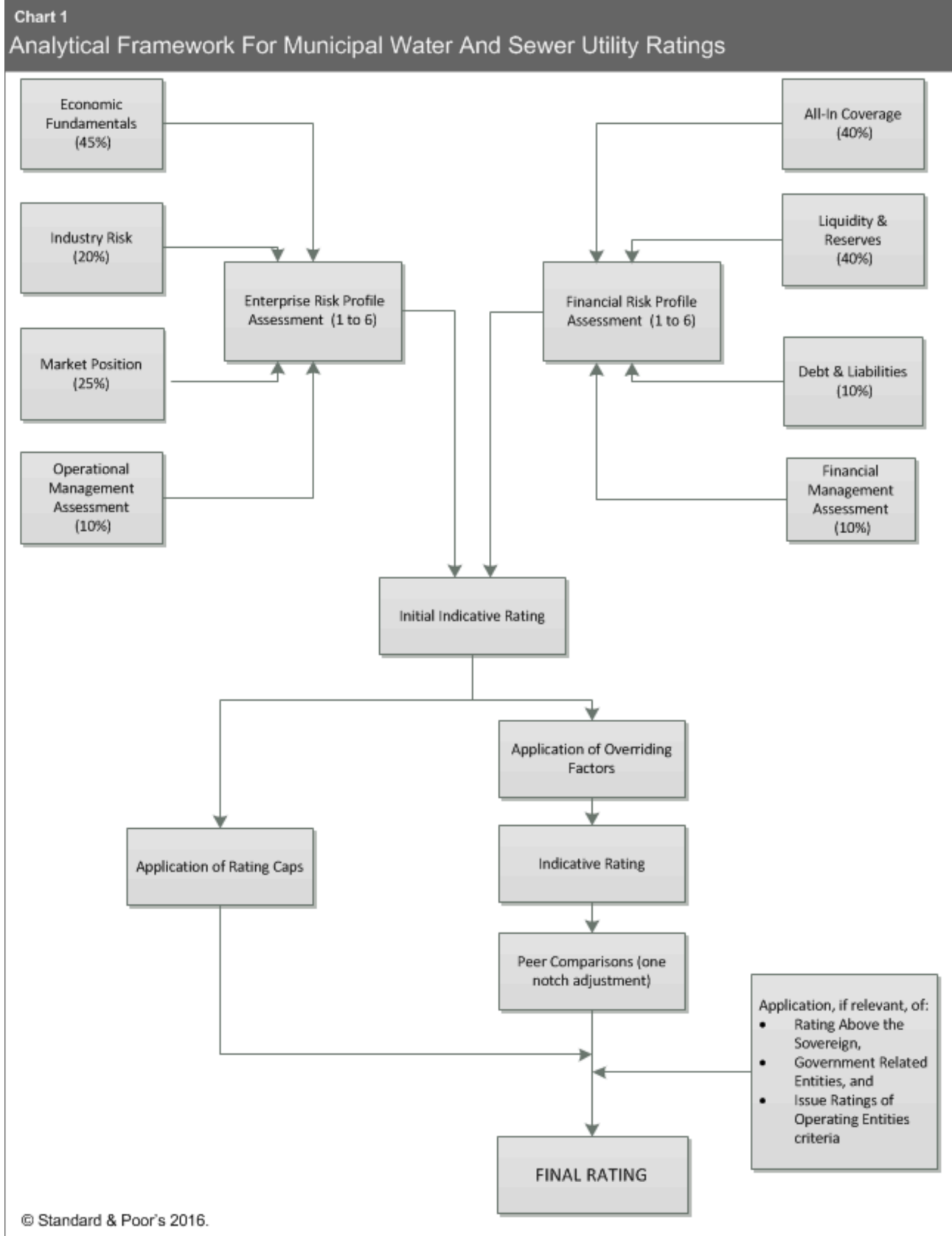
of funds, a lien on pledged revenues securing the bonds, a rate covenant, and an additional bonds test would likely preclude assigning an issue credit rating based solely on these criteria. Other criteria, however, such as, for example, general obligation bonds or multiple revenue streams, might instead apply.

## II. SUMMARY OF THE CRITERIA

12. These criteria use the same framework as our criteria for other municipal enterprise sectors. Specifically, these criteria assign ratings using a framework that considers enterprise risk (enterprise risk profile) and financial risk (financial risk profile). Chart 1 depicts how the enterprise and financial risk profile assessments interact to arrive at the initial indicative rating. The indicative rating is established after applying any appropriate positive or negative overriding factors. The final outcome—which could be an issue credit rating, SACP, or ICR—is reached after making any appropriate peer adjustments. The final rating may be capped based on the presence or absence of certain conditions or characteristics. If more than one cap is applicable, the final rating would be no higher than the lowest cap.
13. If a utility meets the guidelines outlined in "Criteria For Assigning 'CCC+', 'CCC', 'CCC-', And 'CC' Ratings" published on Oct. 1, 2012, then the rating will be assigned based on that criteria.
14. To increase the transparency in the rating methodology and improve the comparability of our ratings globally, the revised methodology is intended to:
  - Provide further detail on how we assess and calibrate each of the identified rating factors;
  - Offer a more detailed explanation of how we arrive at a utility rating through the analysis of the rating factors; and
  - Identify overriding factors that may result in a rating different from the initial indicative rating identified below.
15. The enterprise risk profile and financial risk profile will be measured through an evaluation of the following factors, with the respective weights in parentheses. The enterprise and financial risk profile assessments are rounded weighted averages of these factors.  
  
**Enterprise Risk Profile**
  - Economic fundamentals (45% of the enterprise risk profile assessment);
  - Industry risk (20%);
  - Market position (25%); and
  - Operational management assessment (10%).  
**Financial Risk Profile**
  - All-in coverage (40% of the financial risk profile assessment);
  - Liquidity and reserves (40%);
  - Debt and liabilities (10%); and
  - Financial management assessment (10%).
16. The initial assessment of each of the above factors may be strengthened or weakened by certain qualitative factors, as applicable, and as discussed in more detail beginning in paragraph 46, in order to arrive at the final assessment.
17. The initial indicative rating results from the combination of the enterprise and financial profile assessments in table 1.



18. In certain cases, the initial indicative rating in table 1 contains two options for a given combination of enterprise and financial risk profile assessments. In those cases, we would use our expectations of the utility's future performance to determine which of the two initial indicative ratings to use.
19. The indicative and the final rating could both be capped by the presence or absence of certain conditions, regardless of the rating outcome suggested by table 1. Rating caps are absolute, meaning that the positive relative adjustments described herein, including peer adjustments discussed in paragraph 21, do not apply and the indicative and the final rating cannot exceed the cap. These rating caps are summarized in table 2.
20. The indicative rating could differ from the outcome suggested by table 1 based on certain overriding factors that result in the indicative rating moving a specified number of notches above or below the initial indicative rating. These overriding factors are summarized in table 3.
21. The indicative rating could be raised or lowered by one notch to arrive at the final rating due to comparisons with similarly rated peers. Peer adjustments can be used to capture a more holistic view of creditworthiness. The holistic analysis includes rare or strongly positive or negative characteristics which the criteria do not separately identify. These criteria define peers as other municipal utilities. Peers may include other utilities with similar ratings, size, operational commonalities, geographic location, or financial profile characteristics. Based on our assessment, location may be defined as geographically contiguous or an area in another part of the country with similar economic and market fundamentals. Peer adjustments could also be made based on comparisons with sector-wide data, including ratio analyses. Peer groups may change through time as operating conditions or organization-specific features evolve.
22. The final rating may be constrained by the sovereign rating on the U.S., in accordance with "Ratings Above The Sovereign: Corporate And Government Ratings—Methodology And Assumptions", published on Nov. 19, 2013, as further explained in "Credit FAQ: U.S. Public Finance Ratings And Criteria For Ratings Above The Sovereign", published on Dec. 19, 2013.
23. We deem very few of the utilities rated by these criteria to be GREs. In rare cases where we deem a utility to be a GRE, we use these criteria to determine the stand-alone credit profile. The final rating is based upon our application of "General Criteria: Rating Government-Related Entities: Methodology And Assumptions" published March 25, 2015.
24. Issue credit ratings, including subordinate-lien debt, will be determined based on our view of the ICR and the legal/covenant package, as more fully described in "Assigning Issue Credit Ratings of Operating Entities", published May 20, 2015. Further guidance regarding our view of debt security and covenants is in paragraphs 112 and 113.



### III. IMPACT ON OUTSTANDING RATINGS

25. Standard & Poor's maintains issue credit ratings or issuer credit ratings on revenue-secured debt for almost 1,600 municipal utilities included in the scope of these criteria. We estimate that about 25% of the total ratings will change as a result of the application of these criteria; about half of which would be raised and the other half lowered, most often by one notch.

### IV. EFFECTIVE DATE AND TRANSITION

26. These criteria are effective immediately and apply to all new and outstanding ratings within the scope. We intend to complete our review of issuers affected within the next 12 months.

### V. METHODOLOGY

#### A. Overall Framework For Rating Municipal Utilities

27. These criteria are used to assign credit ratings to utilities based on quantitative and qualitative analysis of a range of economic, financial, operational, management, and debt factors. The analytical framework is articulated around two major components: the Enterprise Risk Profile and Financial Risk Profile. The enterprise and financial risk profile assessments are determined by combining (see chart 1) and then rounding to the whole number the weighted average of the individual factors (as outlined in paragraph 15). The initial indicative rating results from the combination of the enterprise and financial risk assessments as shown in table 1.

Table 1

Determining The Initial Indicative Rating						
Enterprise Risk Profile	Financial Risk Profile					
	1	2	3	4	5	6
	Extremely Strong	Very Strong	Strong	Adequate	Vulnerable	Highly Vulnerable
1 Extremely Strong	aaa	aa+	aa-	a	bbb+/bbb	bb+/bb
2 Very Strong	aa+	aa/aa-	a+	a-	bbb/bbb-	bb/bb-
3 Strong	aa-	a+	a	bbb+/bbb	bbb-/bb+	bb-
4 Adequate	a	a/a-	a-/bbb+	bbb/bbb-	bb	b+
5 Vulnerable	bbb+	bbb/bbb-	bbb-/bb+	bb	bb-	b
6 Highly Vulnerable	bbb-	bb	bb-	b+	b	b-

1. The initial indicative rating results from the interaction between the enterprise and financial risk profile assessments. Potential adjustments to the initial indicative rating are noted in Table 2. The final rating could be one notch higher or one notch lower than the indicative rating based on peer comparisons. 2. For ratings below 'B-' see "Criteria For Assigning 'CCC+', 'CCC', 'CCC-', And 'CC' Ratings", published Oct. 1, 2012, as well as "Methodology: Timeliness of Payments, Grace Periods, Guarantees, and Use of 'D' and 'SD' Ratings", published Oct. 24, 2013. 3. In certain cases, the initial indicative rating in table 1 contains two options for a given combination of enterprise and financial risk profile assessments. In those cases, we would use our expected view of the utility's future performance to determine which of the two initial indicative ratings to use.

28. The enterprise and financial risk profiles described in paragraph 15 may contain sub-factors. Each factor and sub-factor are assessed on a numerical scale, with '1' being the strongest outcome.

29. If the quantitative metric evaluating a particular factor falls at or near a cut-off point, we may assign the stronger assessment if trends are improving or we believe future metrics or attributes will improve, or the worse assessment if trends are weakening or we believe future metrics or attributes will deteriorate.
30. The initial, or anchor assessment for each factor may be adjusted based on qualitative factors for each characteristic or condition that may be present or lacking. Tables 6, 17, 19, and 21 describe some of the most common qualitative factors that could adjust each of the respective initial assessments. The maximum net adjustment to the initial assessments is two points. For example, if the initial assessment is a '3' and there are two favorable adjustments and one unfavorable adjustment identified, the final assessment for that factor would be a '2.' The liquidity and reserves assessment, however, can be capped at a '5' or worse regardless of the initial assessment based on paragraphs 99 through 101.
31. The criteria also include various caps and overrides (see paragraphs 32-41, as well as tables 2 and 3) to arrive at the indicative rating, as well as the ability to raise or lower the indicative rating by one notch based on peer comparisons (see paragraph 21) to establish the final rating. The final rating may be influenced by the rating on the U.S. or its associated country risk, as well as the assignment of issue credit ratings and use of subordinate-lien debt, in accordance with paragraph 24.

## B. Rating Caps And Overriding Factors

32. In certain, but rare, circumstances, the final rating is capped at a certain level. The final rating could be lower than the cap, depending on the severity of the condition present. The rating caps outlined in table 2 are absolute, meaning that the positive relative adjustments described below do not allow the final rating to exceed the cap. If multiple caps are applicable, the rating cap used will be the lower of all those that apply.

Table 2

Summary Of Factors That Cap The Final Rating	
Condition	Result
Either the Operational or the Financial Management Assessment is "Vulnerable" (see paragraph 34)	Indicative and final ratings are capped at 'A'
Both the Operational and the Financial Management Assessments are "Vulnerable" or there is a going concern opinion (see paragraph 34)	Indicative and final ratings are capped at 'BBB-'
Utility or its affiliated LRG is recovering from a financial crisis, emerging out of a recent bankruptcy or receivership, or has significant consultant oversight following an event of default, including a covenant violation (see paragraph 35)	Indicative and final ratings are capped at 'BBB+'
Negative extraordinary intervention (see paragraph 36)	Indicative and final ratings are capped at the lower of 'BBB' or the GO rating of the affiliated general government
Both the all-in coverage and liquidity and reserve assessments result in a '5' or worse (see paragraph 37)	Indicative and final ratings are capped at 'BB+' although if we view liquidity as especially vulnerable, the final rating would generally be capped at 'B+'
Either the Operational or the Financial Management Assessment is "Vulnerable" and the liquidity and reserve assessments are a '5' or worse (see paragraph 38)	Indicative and final ratings are capped at 'BB+'
Both the Operational and Financial Management Assessments are "Vulnerable" and the liquidity and reserve assessments are a '5' or worse (see paragraph 38)	Indicative and final ratings are capped at 'B+'
Management demonstrates a lack of willingness to support financial obligations, or we believe the utility may be considering bankruptcy or receivership filing (see paragraph 39)	Indicative and final ratings on any rated debt not in default are capped at 'B'

33. Certain conditions or characteristics result in an indicative rating that is different from the initial indicative rating, as follows in table 3. If multiple notch overrides are applicable, the indicative rating is based on the net effect of those overrides.

Table 3

Summary Of Overriding Factors	
Condition	Result
Median household effective buying income is among the top quintile of the U.S. (see paragraph 40)	Indicative rating generally will be one notch above that suggested by table 1
Median household effective buying income is among the top 10% of the U.S. (see paragraph 40)	Indicative rating generally will be two notches above that suggested by table 1
Median household effective buying income is among the lowest quintile of the U.S. (see paragraph 40)	Indicative rating generally will be one notch below that suggested by table 1
All-in coverage is at or above 3.0x or cash and investments are equivalent to at least 24 months of operating expenses (see paragraph 41)	Indicative rating generally will be one notch above that rating suggested by table 1
U.S. country risk assessment is '4', '5', or '6' (see paragraphs 44 and 45)	Final enterprise risk profile assessments capped at '4', '5', or '6'
Total indebtedness is likely to increase substantially, but magnitude, scope, and timing are not fully defined (see paragraph 82)	Final financial risk profile assessment generally will be worsened by one point

#### Factors That Cap The Indicative And Final Ratings

34. *Weak management.* The decentralized and autonomous nature of U.S. local governments creates a stronger link between management and credit quality. In cases where either the Operational or the Financial Management Assessment (OMA, FMA; see paragraphs 70 and 106) is characterized as 'vulnerable', the indicative and final ratings will be no higher than 'A'. In cases where both the OMA and FMA are characterized as 'vulnerable' or if an auditor has delivered a going concern opinion with the most recent review of the utility's or associated LRG's financial position, the indicative and final ratings will be no higher than 'BBB-'.
35. *Emergence from bankruptcy or receivership.* A utility that has just emerged from bankruptcy or receivership or a period of consultant or governmental oversight by definition has just been in a period where the financial risk profile—and possibly the enterprise risk profile as well—is extremely weak. Although a credit may emerge with an improved financial risk profile after debt forgiveness or other negotiated settlements or restructuring, or under a new management team, we will cap the indicative and final ratings at 'BBB+' until the utility has re-established a two- or three-year record of audited financial performance, at which time we would re-evaluate it using that new financial history as part of the analysis.
36. *Negative extraordinary intervention.* The line between what may be termed "extraordinary" and "ongoing" negative intervention is not always clear. However, examples of negative extraordinary intervention include cash-stripping or other measures that the affiliated LRG may impose to divert resources from the utility, as the LRG's needs rise. In such cases, the utility's indicative and final rating will be capped at the lower of 'BBB' and the GO debt rating of the affiliated LRG.
37. *Weak total liquidity combined with weak all-in coverage.* If the utility's all-in coverage as well as liquidity and reserves assessments are both a '5' or worse, we will cap the indicative and final ratings at 'BB+', although if we view liquidity as a weakness that cannot be rectified by other available resources, then the rating would be no higher than 'B+'. In our view, poor assessments on both of these factors imply that the utility has no margin for error in any of its operating, debt service, or capital funds in the event of an unfavorable or unplanned variance to its annual budget.



38. *Weak management and liquidity and reserves* Strong management alone can lend itself to operational and fiscal continuity and can serve as a credit stabilizer. In addition, liquidity and reserves provide working capital, funding for unexpected operational problems, and general budgetary flexibility. For example, if contingent liabilities become actual liabilities, both of these factors can together moderate or even relieve a utility from distress. Conversely, their absence creates a limiting factor and often leads to rapid credit deterioration. As such, when the OMA or FMA is characterized as 'vulnerable' and the liquidity and reserves assessments a '5' or worse, the indicative and final ratings are capped at no higher than 'BB+'. If both management assessments are characterized as 'vulnerable' and the liquidity and reserves assessments a '5' or worse, the indicative and final ratings are capped at no higher than 'B+'.
39. *Weak willingness or capacity to support financial obligations.* If the utility's or sponsoring governmental entities' representatives take actions that indicate active consideration of bankruptcy in the near term, or if there is a perceived change in the willingness or lack of capacity to honor all long-term, legally-binding financial obligations in full and on a timely basis, the indicative and final ratings will be capped at 'B'. If applicable, we would apply "Criteria For Assigning 'CCC+', 'CCC', 'CCC-', And 'CC' Ratings", published Oct. 1, 2012 or "Rating Implications Of Exchange Offers And Similar Restructurings", published May 12, 2009. Such a condition might be evidenced by way of conversations with management or governance, verifiable reports in the media, public disclosure, or other informational sources we judge to be relevant. The utility's issuer ratings would be 'D' or 'SD' following a default on an actual financial obligation, or in a distressed exchange, which we would apply "Rating Implications Of Exchange Offers And Similar Restructurings".

#### Factors That Notch From The Initial Indicative Rating

40. *Exceptionally strong or weak income indicators.* Extremely favorable or unfavorable demographics--measured as well above or below the strongest or weakest initial assessments, respectively--could imply extraordinary flexibility or limitation in a utility's ability to enhance its operating revenues on an ongoing basis. Median household effective buying income (MHHEBI) at or above the highest quintile of distribution according to the U.S. Census Bureau's and Bureau of Labor Statistics' joint "Current Population Survey" would generally result in a one-notch rating uplift from the initial indicative rating. Median household effective buying income at or above the top 10% of all households would receive a two-notch rating improvement. Median household effective buying income in the lowest quintile in the U.S. would lower the initial indicative rating by one notch.
41. *Exceptionally strong financial risk profile.* Should there be in our view a high probability that a utility's overall extremely strong financial risk profile is likely to continue on a forward-looking basis even when allowing for stresses, volatility, and additional future obligations, the initial indicative rating would generally be improved by one notch. "Exceptionally strong" is defined specifically to mean: a) All-in coverage\* at or above 3x; or b) Cash and equivalents, that (i) are unrestricted and/or designated but ultimately lawfully available for any general utility purposes; and (ii) are equivalent to at least 24 months of operating expenses (without giving favor to an already-existing debt service reserve fund, and calculated consistent with our definition of days' cash\*).

## VI. Enterprise Risk Profile Assessment

42. The factors that are evaluated for the Enterprise Risk Profile assessment are summarized in table 4.

Table 4

### Description Of Enterprise Risk Profile Factors

#### Economic Fundamentals (45% of Enterprise Risk Profile assessment)

Economic fundamentals measure the strength of the utility's service area economy, including the utility's demographics, characteristics and trends about the customer base, and how crucial the utility's principal customers are to operating revenues.

Table 4

Description Of Enterprise Risk Profile Factors (cont.)
<b>Industry Risk (20%)</b>
The industry risk evaluation aims to evaluate the external environment in which municipal utilities operate and its relevant characteristics, including cyclical, competitive risk, and growth environment.
<b>Market Position (25%)</b>
The market position measures the relative affordability of utility rates given the income indicators and relative poverty of the service area, as well as comparability of rates with those of peers in the region or state.
<b>Operational Management Assessment (OMA; 10%)</b>
The OMA evaluates our view of the effectiveness of utility management in ensuring that there is alignment of operational, environmental, strategic, and financial goals to support the system's success.

43. The descriptors of outcomes for the overall enterprise risk profile are based on the scales shown below in table 5. The criteria do not round to a whole number until arriving at a final enterprise risk profile.

Table 5

Descriptors For Enterprise Risk Profile Factors	
Assessment	Description
1	Extremely Strong
2	Very Strong
3	Strong
4	Adequate
5	Vulnerable
6	Highly Vulnerable

## Factors That Affect The Enterprise Risk Profile

Country risk assessment for the U.S.

44. The relevant credit risks for U.S. municipal utilities are also influenced by country-specific risks (see "Country Risk Assessment Methodology And Assumptions", published Nov. 19, 2013). Country risk is the risk an entity faces by having some of its operations or assets exposed to one or more countries. Country-specific risks consist of economic risks, institutional and governance effectiveness risks, financial system risk, and payment culture/rule of law risk. The country risk assessments determined on a scale from '1' (very low risk) to '6' (very high risk).
45. The country risk assessment with respect to these criteria derives from the U.S. country risk assessment as determined under the criteria cited above. If the U.S. country risk assessment is a '3' or better, there is generally no positive or negative impact on the final rating. However, if the U.S. country risk assessment is '4' or worse, this could affect the enterprise risk profile assessment. Specifically, if the U.S. country risk assessment is '4', '5', or '6', we will generally assign an enterprise risk profile assessment of no better than '4', '5', or '6', respectively.

## A. Assessing Economic Fundamentals

46. The assessment of economic fundamentals provides insight into the employment, socioeconomic, and demographic environment in which the utility operates as well as the health of the service area economy relative to that of the U.S. as a whole.
47. The assessment of economic fundamentals is based on two measures: median household effective buying income of the service area as a percentage of the U.S. and the trend in economic output of the service area, as measured by its real (inflation-adjusted) gross county product. If the service area spans multiple counties, these criteria pro rate the metrics based on the estimated population in each county as a percent of the total service area population.
48. The two components are combined (see table 6) to determine an initial economic fundamentals assessment. Positive and negative qualitative factors are then evaluated for applicability to achieve the final economic fundamentals assessment. The cumulative net effect of all adjustments is limited to an improvement or worsening of two points to the initial assessment.

Table 6

Assessment Of Economic Fundamentals			
Current Median Household Effective Buying Income (% of U.S.)	Real Gross County Product, Rate Of Change Last Two Years, Plus Projected Next Two Years [1]		
	Stronger than U.S. rate of GDP annual growth by 1% or more	Within +/- 1% of U.S. rate of GDP annual growth	Weaker than U.S. rate of GDP annual growth by 1% or more
125% or more	1	1	2
100% to 125%	1	2	3
75% to 100%	2	3	4
35% to 75%	3	4	5
35% or lower	4	5	6
Qualitative Factors Positively Affecting The Initial Assessment Include:			
Efficiencies and natural economies of scale associated with being a larger utility (see paragraph 50).			
Broad and diverse employment base, or ratepayers living in the service area have access to such a base (see paragraph 51).			
Unique key local employer, such as a university or military base, that serves to stabilize the economy, even if skewing income indicators unfavorably (see paragraph 55).			
Qualitative Factors Negatively Affecting The Initial Assessment Include:			
Unemployment rate of the county of 10% or worse.			
A steadily declining population, or dependent population* of more than 55%.			
The lack of efficiencies and natural economies of scale because the utility is smaller (see paragraph 50).			
Employment sector concentration, or inauspicious prospectsexist for a key major local employer within the next 36 months (see paragraph 54).			
The 10 largest customers account for 25% or more of operating revenues, or the top one is 10% or more (see paragraph 56).			
Each applicable qualitative factor changes the initial assessment by one point (with the exception of the economies of scale adjustor, which can result in a one-half point change), but the net total of all adjustments would never improve or worsen the initial assessment by more than two points. [1] For example, if the base/current year is 2015, the time period examined would be 2014 (actual, full-year); 2015 (annualized estimate); 2016 (forecast) and 2017 (forecast).			

49. For service areas in which there is no specific MHHEBI data available, the data from the next largest measurable



geographic unit will be used. For example, if the service area is that of a small unincorporated portion of a county and if that data is not available, the MHEBI of that county will be used. An exception could be if there is clear evidence that the service area incomes and macroeconomic trends are materially and measurably different from the geographical unit at large, in which case we will use the best available data.

50. Certain natural operating efficiencies and economies of scale are often present in larger utilities. Examples may include physical redundancies or the ability to spread fixed costs over a greater number of gallons sold. These criteria define a utility's size based on average annual gross operating revenues of the three most recent audited fiscal years. Table 7 outlines the applicable adjuster that is combined with the result from table 6. For instance, if the three most recent years resulted in operating revenues of \$21.4 million, \$24.7 million, and \$29.8 million, the simple average of the three would be \$25.3 million, resulting in a neutral adjuster rather than a worsening by 0.5. Drainage-only utilities are excluded from this adjuster, as we believe they have an inherently lower operating risk and are usually smaller by revenues by their nature. Irrigation districts are separately addressed in paragraph 57.

Table 7

Economies Of Scale Qualitative Factor	
Total Operating Revenues (Mil. \$)	Change to Initial Assessment
More than 150	(1)
Between 75 and 150	(0.5)
Between 25 and 75	0
Between 5 and 25	0.5
Less than 5	1

51. We assess whether the utility's service area participates in a larger, broad, and diversified economy at the federally-defined metropolitan statistical area (MSA) level. The determination is based on an evaluation of employment diversity, employment growth, and the employment base. Each of these three factors is characterized as 'strong', 'moderate', or 'weak' consistent with a similar evaluation in "Local Government GO Ratings Methodology And Assumptions", published Sept. 12, 2013. Participation in a 'strong' MSA would generally lead to a one-point improvement in the initial assessment. Conversely, no adjustment would be applied if we deem the MSA as 'weak' or if the service area does not lie within a defined MSA. If the MSA is described as moderate, applying the broad and diverse positive adjustment may still be applicable if the macroeconomic trends of the MSA and our expectations for future performance in the next two years are reasonably likely to cause existing metrics to improve.
52. The diversification of the utility's service area's economic structure is important to assess the potential volatility of its employment base and its resilience to stresses. An example of a deep, broad, and well-diversified economy would be employment-sector distribution that closely resembles that of the U.S. at large. This depth and diversity could lessen the impact on the utility's operating revenues better than an economy with more exposure to a single employer or industry or only a few employment sectors. A small and concentrated or shallow economic base also tends to be more exposed to external factors and macroeconomic cycles.
53. If employment in an individual sector—excluding education/health, government, and transportation/trade/utilities—represents more than 30% of the nonfarm work base, the local economy is deemed to be highly susceptible to that employment sector. As such, a one-point worsening of the assessment would be applied.

An example would be a small town that does not participate in an MSA and has a major manufacturing component in the local labor force.

54. Regardless of the employment sector or nature of its business, if a major local employer has publicly announced that within the next 36 months it will be reducing or completely shuttering operations within the service area or we expect it to do so, a one-point unfavorable adjustment would be warranted.
55. If we do not deem there to be a broad and diverse economy, the presence of a major employer can still sometimes act as a stabilizing force, possibly even adding context to lower income indicators. In such a case, a favorable adjustment of one point may be applied. Examples of such major employers include higher education institutions, health care facilities, military installations or even, more rarely, a large and stable corporate presence.
56. Employment and customer base characteristics typically have a close correlation to utility operating revenues. If a small number of customers provide a large amount of revenues, the utility could be exposed to revenue volatility. As such, when the top 10 retail customers contribute 25% or more of total operating revenues, or the top one retail customer is 10% or more of total operating revenues, the assessments worsened by one point.
57. For irrigation districts and comparable raw-water providers for which the end-use customer is agriculture or agriculture-related—such as ranches or dairy—MHHEBI and relative economic performance are less meaningful. In our observations, these economies generally have inherent limitations given the dominance of farming to the local economy, and non-municipal consumptive use patterns. Therefore, for these issuers, the default initial economic fundamentals assessments a '3', although negative, but not positive, qualitative factors that adjust the initial assessment could still be applicable.

## **B. Assessing Industry Risk**

58. Consistent with "General Criteria: Methodology: Industry Risk", published Nov. 19, 2013, we consider industry risk for utilities covered under these criteria as very low, the most favorable assessment possible on a '1' to '6' scale, with '1' being the best.
59. The following are key characteristics of the utility industry as relevant to the industry risk factor:
- Cyclical risk assessment of '2' based on Standard & Poor's review of historic economic cycles and peak-to-trough changes in revenues and margins for regulated utilities. Economic cycles can affect nonrecurring revenues such as impact fees as well as drive priorities in the capital improvement plan but weather, not the economy, is generally the largest single determinant to a favorable or unfavorable variance to budget in any single fiscal year;
  - Very low competitive risk of '1', owing to legal and practical barriers to entry in nearly all jurisdictions, and that as an essential service there is no substitution risk;
  - Nearly all municipally-owned water, sewer, and drainage utilities are natural—and in most cases statutory—monopolies with complete autonomy over their own rates by the local decision-making body. There are some states in which the utility must seek approval of rate adjustments by some state regulatory body, such as a public service commission. There are also some states in which large rate increases, before they can take effect, may be subject to some kind of popularly-initiated opportunity to be overturned by the electorate, such as in California via Proposition 218.

The industry risk assessment of very low risk applies to all utilities rated by these criteria regardless of the state in which they operate. While likely uncommon, limitations on rate autonomy would likely be measured elsewhere, such as in financial performance if the timeliness and magnitude of requested versus granted rate case lead to deterioration in credit quality.

## C. Assessing Market Position

60. The relative poverty rate is important because service areas that have not just lower MHHEBI levels, but disproportionately higher percentages of the population located in the lowest quintiles of the MHHEBI distribution curve, may exhibit greater sensitivity toward perceived affordability even if adjusted for low inflation or a favorable cost of living. Therefore, it is possible that the impact of utility bills and related rate increases is even more profound in those communities compared to communities with stronger economic fundamentals.
61. Actual consumption patterns vary from region to region based mainly on climate, precipitation, use of demand side management and water conservation measures, and economic factors. The market position assessments based on the actual average monthly residential water and sewer bill. The information generally will be based on the most recent audited fiscal year, unless we believe that historical rates are not indicative of future rates. In those cases we will base the assessment on projected rates. For purposes of this assessment we calculate the monthly bill as follows:

The total annual residential operating revenues plus any related fees, surcharges and taxes divided by the number of active residential metered accounts. The result is divided by 12 to arrive at the monthly bill.

62. There could be practical limitations to applying paragraph 61 such as transparent and timely financial reporting and disclosure details, the sophistication of the utility's customer information system database, and the possibility that the utility may deem this information as competitively sensitive and nonpublic. If the actual average monthly residential bill is not readily available, the market position assessment assumes a residential customer that in one month has used 6,000 gallons of both treated water and sanitary sewer service, conceptually similarly to the Environmental Protection Agency (EPA)'s residential indicator (see Appendix III, paragraph 133). In cases where the utility's chosen unit of billing is measured in hundred cubic feet (ccf), the closest rounded equivalent of 8 ccf is used (see Appendix III, paragraph 135). Any minimum or base charge or 'lifeline rate' is also included in the calculation, as are any related fees, surcharges, or taxes regardless of who is levying them since the burden ultimately still lies with the customer to pay it.
63. To gauge the annual utility burden to the household, the assumed monthly bill, as calculated above in paragraph 61 or 62, is multiplied by 12 to estimate the total annual cost to the household for utility service.
64. Relative rate affordability is calculated as follows: in the numerator is the annual household utility burden as calculated above from paragraph 63, and in the denominator the actual median household effective buying income of the service area of the utility (or the closest approximation, as established in paragraph 49), then multiplied by 100. This produces the cost to the household of its utility expenses as a percentage of total disposable income.
65. For irrigation districts, the customer base is primarily farms in agricultural production rather than residential customers

that rely on the system for essential public health needs, and in this context, poverty rates do not apply. However, the pricing power of many irrigation districts is constrained by the more elastic demand for water from these businesses, and in many cases the availability of alternative supply sources, such as groundwater produced from privately-owned wells. Therefore, for these issuers, the default initial market position assessments a '3', although negative, but not positive, qualitative factors that adjust the initial assessment could still be applicable should they, in our view, affect the system's revenue-raising flexibility.

66. For drainage utilities rated by these criteria, rate structures tend to be exclusively either one of two types:

- A flat monthly charge tied to a residential property as the base unit of billing, with larger properties or parcels assessed as if they were equivalent to multiple residential properties. For example, a strip mall may be treated for billing purposes as if it were five equivalent residential units. For those utilities whose charges are based on a flat fee, we assume the fee assessed on a single-family residential property; or
- A fee based on the actual impervious surface area of the property. (Standard & Poor's assumption for the monthly bill is based on a residential property. For those utilities whose charges are based on impervious surface area rather than a flat fee, we assume 2,000 square feet of impervious surface area.)

67. Tables 8, 9, and 10 summarize how the criteria evaluate the market position of the utility, driven by the rate affordability and relative poverty rate. Table 8 applies to water-, or drainage-only utilities. Table 9 applies to sewer-only utilities. Table 10 applies to water and sewer/drainage utilities.

Table 8

Market Position Assessment, Water- Or Drainage-Only Utilities			
	Annual Utility Bill As A Percent Of Median Household Effective Buying Income		
Percent of county's population living in poverty	Less than 1%	1% to 2%	More than 2%
Less than 10%	1	2	3
10% to 20%	2	3	4
20% to 30%	3	4	5
More than 30%	4	5	6

For utilities with an anchor assessment of 5 or 6 that have recently completed or achieved substantial completion of a historically capital-intensive period, the anchor assessment may improve by one point (see paragraph 68).

Table 9

Market Position Assessment Sewer-Only Utilities			
	Annual Utility Bill As A Percent Of Median Household Effective Buying Income		
Percent of county's population living in poverty	Less than 1.25%	1.25% to 2.50%	More than 2.50%
Less than 10%	1	2	3
10% to 20%	2	3	4
20% to 30%	3	4	5
More than 30%	4	5	6

For utilities with an anchor assessment of 5 or 6 that have recently completed or achieved substantial completion of a historically capital-intensive period, the anchor assessment may improve by one point (see paragraph 68).

Table 10

Market Position Assessment For Water And Sewer/Drainage Utilities			
Percent of county's population living in poverty	Annual Utility Bill As A Percent Of Median Household Effective Buying Income		
	Less than 2.25%	2.25% to 4.50%	More than 4.50%
Less than 10%	1	2	3
10% to 20%	2	3	4
20% to 30%	3	4	5
More than 30%	4	5	6

For utilities with an anchor assessment of 5 or 6 that have recently completed or achieved substantial completion of a historically capital-intensive period, the anchor assessment may improve by one point (see paragraph 68).

68. Rate affordability without context may under- or over-represent credit strengths. For example, a utility with rates much higher than comparable peers that has already made the capital commitments to address a regulatory mandate driven by past noncompliance with environmental permits would be viewed more favorably than a utility with similarly high rates but that is facing a huge unfunded regulatory mandate. For utilities that have relatively high rates—as defined by an initial assessment of a '5' or '6'—but have recently completed or substantially completed an extraordinarily capital-intensive period in its history, the initial market position assessment generally will be improved by one point.
69. The criteria do not establish a preference toward a certain water and sewer utility rate structure. For example, management may use a flat or fixed rate, volume-based rates, or some combination thereof. Similarly, the criteria do not penalize a rate structure that encourages conservation—essentially incentives for lower sales through price signals.

## D. Assessing Operational Risk Management

70. The Operational Management Assessment (OMA) consists of a review of the following sub-factors, assessed from (1) strong; (2) good; (3) standard; to (4) vulnerable and weighted as shown below to calculate the OMA:
- Asset adequacy and identification of operational risks (40%);
  - Organizational effectiveness, management expertise, and drought management plan (20%); and
  - Rate setting practices (40%).
71. The OMA refers to risks associated with the operation of the utility; financial policy is covered by the Financial Management Assessment.
72. The results from the observed evaluations assessed in paragraph 6 are converted to a '1' to '6' scale as shown in table 11.

Table 11

Operational Management Assessment (OMA) Conversion To Six-Point Scale		
Observed Evaluation	OMA	Characterization
1.0 to 1.2	1	Strong
1.2 to 1.8	2	Good
1.8 to 2.5	3	Good
2.5 to 3.1	4	Standard
3.1 to 3.6	5	Standard



Table 11

Operational Management Assessment(OMA) Conversion To Six-Point Scale (cont.)		
3.6 to 4.0	6	Vulnerable

73. The assessment of all sub-factors is based on a preponderance of evidence. Specifically, in our judgment are most, but not necessarily all, of the described characteristics applicable? A utility receives a neutral assessment if 'standard' for any sub-factors for which there is insufficient evidence to assign either a positive or negative assessment. However, some sub-factors may receive a negative assessment if a utility has a record of failing to disclose key relevant information.
74. There is no favored governance structure for the utility within the methodology. Some municipal utilities are a department or component unit of the local political subdivision, governed by the same locally elected officials as the LRG. Other utilities are governed by an independent or quasi-independent utility board. The governance structure will be credit-neutral so long as there seems to be the ability for management to operate the utility as an ongoing, viable enterprise, largely independent from politics, with professionals who are capably engaged in risk oversight and can balance interests appropriately.
75. Asset adequacy and identification of operational risks examine how successfully management is faring by owning and operating a public water, sewer, or drainage enterprise (see table 12). Utilities are subject to the federal Safe Drinking Water Act of 1974 ("SDWA", 42 U.S.C. § 300f, as amended) and Clean Water Act of 1972 ("CWA", 33 U.S.C. § 1251, as amended), or even an municipal separate storm sewer system (MS4) drainage utility permit. However, the utility may be in various degrees of compliance or readiness. Examples include a long-term water supply that is appropriate in both quantity and quality to serve the existing and likely future customer base or treatment capacity that is sufficient to meet average and peak day demand. Recognition is given for any water reuse system in place, whether indirect or direct. Also assessed in this sub-factor is the materiality of non-revenue water\* (see Appendix II, paragraph 136).

Table 12

Asset Adequacy And Identification Of Operational Risks Assessment	
<b>Strong</b>	The utility has in place or is in the process of securing a raw-water supply that is reasonably projected to be sufficient through the life of the bonds. The integrity of the distribution and/or collection system, meters, and raw-water delivery assets is strong, or efforts are ongoing to rehabilitate them. Treatment capacity to meet average and peak day demand is sufficient in virtually every circumstance. Climate risk assessments incorporated into planning and operations as a potential risk to the system. Water audits based on industry-accepted performance standards are incorporated into the annual budget such that nonrevenue water physical and economic losses are not material. A thorough vulnerability assessment across all critical assets has been performed to industry standards and been completed and incorporated into operations as much as reasonably possible.
<b>Good</b>	The existing raw-water supply is sufficient for the existing customer base. The utility may need to enhance the supply sometime beyond the next 20 years, depending on growth and climatology/hydrology, but management has identified this risk into its long-term plans. Inflow, infiltration, and/or raw-water delivery are generally not problematic, or efforts are ongoing to rehabilitate them. Treatment capacity to meet average and peak day demand or flow is sufficient with only rare exceptions. Climate risk assessments addressed in some key areas, such as supply planning or flood protection. Water audits based on industry-accepted performance standards are done on a regular, if not annual, basis such that nonrevenue water physical and economic losses are small. A vulnerability assessment has been completed to industry standards in most key areas and incorporated where management most deems relevant.
<b>Standard</b>	The existing raw-water supply will likely need to be enhanced within the next 10 to 20 years, but options for addressing the need have not yet been identified or, if so, have not been fully priced. Inflow, infiltration, and/or raw-water delivery are pronounced but not yet material or are problematic but will be addressed within the current capital improvement plan. Treatment capacity to meet average day demand is sufficient, but peak day demand or wet weather flows create constraints until ongoing projects are completed. Climate risks are identified, but other priorities preclude any immediate actions. Water audits based on industry-accepted performance standards are done only when management deems them necessary, likely evidenced by nonrevenue water economic and physical losses that are material. A vulnerability assessment has been done, perhaps only partially or perhaps not in accordance with industry standards, and implementation has been either partial or not at all.
<b>Vulnerable</b>	The existing raw-water supply and/or treatment capacity cannot currently and consistently meet peak day demand or flows. The raw-water supply is subject to a high degree of regulation and/or litigation, which can quickly introduce long-term uncertainty. Inflow, infiltration, and/or raw-water delivery are problematic and material, or the utility is highly dependent on or susceptible to another water purveyor. Climate risk is not explicitly addressed either in plans or operations. Water audits based on industry-accepted performance standards are not done and nonrevenue water economic and physical losses are problematic. No vulnerability assessment has been done.

76. To evaluate organizational effectiveness management expertise, and drought management planning, the assessment looks to the key elected or appointed decision-makers and top staff (see table 13). This sub-factor assesses how well utility leaders are able to convey the needs of the utility to external and internal stakeholders in a manner that is likely to allow the utility to continue with stability. While there may be some practical limitations due to civil service regulations, mentoring and succession planning among key staff can ensure continuity. Also evaluated is whether or not the utility has a resource management plan (voluntary or mandatory) that outlines steps it would implement in a drought situation, even if the state has its own rules or guidelines. This would be deemed separate from any existing water conservation-oriented rate schedule the utility may already have in place year-round.

Table 13

Organizational Effectiveness, Management Expertise, And Drought Management Plan Assessment	
<b>Strong</b>	Management communicates the utility's long-term needs and strategic goals, such as funding requirements, approval of crucial projects, and resource planning, to internal and external key officials on a regular, credible, and transparent basis, putting the utility in the best reasonable position for operational continuity. Examples might include ongoing public education campaigns, town halls, dedicated web sites, and social media. Management has considerable knowledge, experience, or a track record of success in operating all of the utility's key business units in an integrated fashion. Internal mentoring and succession plans are common. Management is able to put its strategic planning into reality; therefore, the utility is successful relative to its peers. The utility has its own drought management plan that details how much conservation it would seek depending on a drought's severity while still ensuring revenue requirements are met.
<b>Good</b>	Public outreach and transparency is a common part of the organizational culture, even if not comprehensive across all key business units. Management has reasonable expertise and experience and has established pathways for succession and continuity where it can; therefore, operational surprises are rare. Management has a good track record of successfully converting strategic decisions into constructive action. The utility has its own drought management plan that details how much conservation it would seek depending on a drought's severity although how it might meet its revenue requirements in such a scenario is uncertain.
<b>Standard</b>	Management depth or breadth is limited in some areas, such that the loss of key personnel would create, only temporarily, a learning curve for the new staff but not likely to measurably affect the utility for long. Public outreach is done generally only when necessary, often associated with a large or controversial project. Operational and financial strategies are generally aligned. The utility has no drought management plan but does operate in a state with a clearly detailed plan that already exists.
<b>Vulnerable</b>	The utility relies on one or only a few key employees or perhaps relies on external consultants. Negative variances are not uncommon. The utility has a history of regulatory or legal infractions beyond an isolated episode or outside industry norms, which introduced an as-yet-unaddressed challenge. Operational and financial strategies may have had one or more major misalignment, limiting the ability to move forward on something important. Neither the utility nor the state in which it operates has an existing drought management plan, making resource sustainability as well as meeting financial obligations uncertain.

77. Most, but not all, utilities are monopolies with autonomy over their own rates. If the utility is rate-regulated, the history of timeliness on rate cases and the magnitude of what was granted versus requested will be examined. The evaluation of rate-setting practices looks beyond magnitude or frequency of rate adjustments. Instead, we evaluate whether management has acted, in our opinion, in a manner generally supportive of credit quality when tough decisions have needed to be made. Such credibility can also aid community support when such increases are needed and help protect future rate-making decisions from short-term political manipulation and decrease the potential for rate shock (see table 14).

Table 14

Rate-Setting Practices Assessment	
<b>Strong</b>	When rate increases have been needed, the decision-making body has been supportive and timely, even to the extent that multiyear, preapproved rate increases are common, if not standard. Financial decisions are prudent, in our view, rather than simply politically expedient and that could possibly be to the detriment of the utility's near-term financial health. Periodic rate studies (internal or external) are common.
<b>Good</b>	Rate considerations are done on a year-to-year planning horizon rather than over a long-term time frame, but generally are a politically approved if and when necessary.
<b>Standard</b>	The rate covenant and/or additional bonds test are the de facto guide as to when rate adjustments are necessary, but that is still enough for the political decision makers to agree to a rate increase.
<b>Vulnerable</b>	Rate increases are often in reaction to a weakened financial position, including a technical default or some other legal covenant violation, even if the recent debt service payments were made on time and in full. There is clear evidence of recent political decisions to defer or downsize needed rate increases.



## VII. Financial Risk Profile Assessment

78. The factors that are evaluated for the Financial Risk Profile assessment are summarized in table 15.

Table 15

Description Of Financial Risk Profile Factors
<b>All-In Coverage (40% of Financial Risk Profile assessment)</b>
Analysis includes examination of historical and preferably GAAP-based results, the current financial condition of the utility, and projected scenarios for the next one to three fiscal years. The focus is on total financial capacity versus total revenue requirements.
<b>Liquidity and Reserves (40%)</b>
This factor incorporates all lawfully available cash reserves and external working capital or liquidity sources, including bank lines in force within the life of any short-term obligations.
<b>Debt and Liabilities (10%)</b>
This factor incorporates mainly quantitative, but also qualitative, analyses about not just the absolute measure of the utility's indebtedness but also the capacity to incur and support additional debt, especially in relation to maintaining any minimum financial metrics as covenanted to bondholders. Measurable liabilities such as pension and postemployment benefits can lead to adjustments to this initial factor.
<b>Financial Management Assessment (10%)</b>
Analysis includes an evaluation of ongoing management practices and policies that can be supportive of financial performance and continuity, as well as internal controls and reporting. Examples include establishing a minimum level of acceptable working capital, predictability of cash transfers from the utility system, and creating and perpetually updating a long-term financial forecast.

79. The descriptors for the overall financial risk profile are based on the scale in table 16.

Table 16

Descriptors For Financial Risk Profile Factors	
Description	Corresponding Assessment
Extremely Strong	1
Very Strong	2
Strong	3
Adequate	4
Vulnerable	5
Highly Vulnerable	6

80. These criteria use assessments derived from historical and projected financial performance. In most cases, the ratio calculations are based on the three most recent independently audited financial statements. Our analytical assessment of pro forma or projected data will be used for those ratios affected by additional debt issuance or funded from cash reserves, or when we believe that historical financial performance is not representative of expected future performance.

81. For all-in coverage or liquidity and reserves assessments that use multiple years of historical and projected data, each single year receives a preliminary assessment. The preliminary assessments from each applicable year are averaged together to then derive one single assessment for that factor.

## Factors That Affect The Financial Risk Profile

Significant additional upcoming debt

82. If a utility has potentially sizable, but as yet unspecified, capital plans that could result in material additional debt and/or the use of reserves—including when there is or will be high levels of non-discretionary capital funding, and we determine that such plans have a reasonable likelihood of occurrence but are not specific enough yet to determine pro forma or projected financial metrics—we generally will worsen the entire financial profile by one point. Compelling factors that would likely preserve credit quality include preapproved rate adjustments multiple years into the future, or an existing debt service schedule that allows for the new debt to be layered on in a manner that we believe is unlikely to worsen financial performance.

### A. Assessing All-In Coverage

83. While there are a variety of financial metrics that measure the ratio of revenue to revenue requirements, including financing obligations, we believe that all-in coverage best gauges the utility's true total financial capacity.
84. All-in coverage is our internally adjusted debt service coverage metric that we believe best tracks the use of every dollar of utility operating revenues, regardless of lien position, accounting treatment or ultimate purpose. It also incorporates recognition of fixed charges or costs, which we define as certain long-term recurring items that are debt-like in nature, even if legally treated as an operating expense. An example of a fixed cost would be the take-or-pay minimum payment to the utility's wholesale provider of treated water. Other examples of fixed costs would include rental expenses for a sale-leaseback arrangement, GO debt which we consider self-supporting debt\*, or other situations that reflect support of off-balance sheet debt. Vertically integrated utilities may not have any fixed costs. We would not include any tax-supported debt for which there is a dedicated tax revenue, nor would we include the tax revenue itself that is meant specifically to pay the tax-supported debt. All-in coverage also excludes adjustments to fixed costs for small or nonmaterial financing obligations such as a capital equipment lease for a vehicle or copy machine.
85. These criteria also look to total revenues less expenses (but excluding non-cash items), even if the pledge to bondholders is gross operating revenues. This is because we assume that the utility must be a viable, ongoing, cash flow-positive enterprise. Standard & Poor's defines all-in coverage as:

$$\frac{[(\text{Revenues} - \text{Expenses} - \text{Total Net Transfers Out}) + \text{Fixed Costs}]}{(\text{All Revenue Bond Debt Service} + \text{Fixed Costs} + \text{Self-Supporting Debt Service})}$$

Total net transfers out are defined as transfers from the utility fund minus transfers into the utility fund, including but not limited to:

- Transfers that are viewed as general fund resources, such as a payment in lieu of taxes, indirect cost reimbursements, and open-ended transfers;
- Transfers that reimburse the general fund for pension and other postemployment benefit (OPEB) payments to the

general fund made on behalf of utility employees and retirees;

- Transfers that fund pay-as-you-go capital expenditures in another governmental fund; and
- Transfers to support any other governmental operations regardless of the destination fund.

We deem net transfers out that legally or by practice support debt service of another governmental fund as part of the denominator's self-supporting debt. Cash that does not truly leave the utility, such as a set-aside into a rate stabilization reserve or pay-as-you-go fund are not included as transfers out. Similarly, the application of a rate stabilization fund (RSF) or other cash on hand as a transfer in would not be included in the all-in coverage calculation, although we would note the presence and use of the RSF as a qualitative adjustment to the all-in coverage assessment as described in paragraph 89.

86. The accounting treatments and even provisions in the bond documents vary; for example transfers are usually a use of surplus net revenues, but sometimes may be treated as an operating expense. The methodology would treat recurring transfers as an operating expense to measure the general government's reliance on the transfer payment. An annual transfer payment that is consistent in nature, such as based on a percentage of operating revenues or a fixed dollar amount, is more predictable than one that is not defined and therefore could be as big as the general government decides it should be. For example, an all-in coverage calculation of less than 1x might suggest a net cash withdrawal from the utility fund. Table 17 summarizes the all-in coverage evaluation.
87. In cases where an unconditional take-or-pay minimum, capacity payment or demand charge does not exist or is not explicit, these criteria will impute what we deem to be a logical and reasonable equivalent for the purpose of calculating all-in coverage. The methodology uses the utility's relative contribution to its wholesaler provider's total operating revenues as the basis for the fixed-cost imputation. For example, if the utility being rated accounts for 15% of its wholesaler provider's total annual operating revenues, and the wholesaler's total annual debt service payments are \$10 million, then \$1.5 million will be imputed as fixed costs for all-in coverage calculation purposes.

Table 17

Assessment Of All-In Coverage	
Initial Assessment	All-In Coverage
1	1.60x or above
2	1.40x to 1.60x
3	1.20x to 1.40x
4	1.10x to 1.20x
5	1.00x to 1.10x
6	Below 1.00x
<b>Qualitative Factors Positively Affecting The Initial Assessment Include:</b>	
A significant portion of operating revenues have a high degree of certainty, such as from wholesale sales with take-or-pay minimums, even if those wholesale sales serve to depress total debt service coverage due to cost-of-service rates (see paragraph 88).	
The planned, but infrequent use of a rate-stabilization fund indicates the absence of a weakness, all other things being equal, as opposed to the presence of a credit-positive characteristic. Still, it could explain poor coverage that has otherwise been consistently better (see paragraph 89).	
<b>Qualitative Factors Negatively Affecting The Initial Assessment Include:</b>	
A debt service schedule that makes it extremely likely the utility will need significant growth or large rate increases to meet future requirements, such as a deferral of principal repayment far into the future.	

Table 17

### Assessment Of All-In Coverage (cont.)

Debt service coverage that is reliant on new customer fees or nonrecurring nonoperating cash inflows just to achieve a ratio of at least 1x (see paragraph 90).

Exposure to interest-rate sensitivity via variable-rate debt that is enough to lead to a worse initial assessment (see paragraph 91).

Each applicable qualitative factor changes the initial assessment by one point, but the net total of all adjustments would never improve or worsen the initial assessment by more than two points.

88. Some utilities provide mostly retail service directly to the consumptive-use customer, but may also generate operating revenues via sales for resale, or wholesale sales. Wholesale sales are often at a cost-recovery rate with much smaller net operating margins, serving to depress total all-in coverage. For utilities with between 20% and 49% of operating revenues coming from firm (contractual) wholesale sales, a one-point improvement in the all-in coverage assessment would be applied to put the depressed all-in coverage into better context.
89. The planned use of rate stabilization funds (RSF) or equivalent designated reserves from time to time could, analytically, temper measurable declines from a trend of stronger financial performance. Yet recurring reliance on an RSF in lieu of other measures such as rate adjustments to address imbalances among revenues, expenses, and debt service can be evidence of a credit weakness. Utilities that perform down to the level of permissive legal covenants, such as the allowance of the use of certain cash balances toward satisfying a rate covenant or additional bond test and potentially creating a weak alignment between revenues and expenses, would see the initial assessment lowered by one point. This is especially true when actual performance indicates insufficient pledged revenues without the use of cash.
90. It is not uncommon for utilities to charge a one-time fee as new structures hook up to the system (exclusive of any deposit that may be required), often called a connection or impact fee. The all-in coverage ratio will be stressed by hypothetically removing these nonrecurring items from total revenues, to gauge a utility's relative dependence upon these fees just to achieve sufficient financial performance. Such fees are strongest during periods of high growth in the number of metered accounts. While perhaps they are pledged revenues, impact fees can overstate revenues available for debt service. Conversely, a slowdown or cessation of such growth—especially if not expected by management—could create a precipitous drop in the utility's financial performance and expose vulnerability in the financial risk profile. Achieving a ratio of less than 1x solely from recurring revenues on a consistent basis indicates structural budgetary imbalance and would worsen the assessment by one point.
91. These criteria do not establish a guideline as to an allocation of variable-rate debt as a percentage of total long-term debt. However, if all-in coverage by our projections would change between one of the initial assessments to another in table 17 as a result of a change in interest rates, the all-in coverage assessment will reflect the worse of the two possible outcomes.

## B. Assessing Liquidity And Reserves

92. The liquidity and reserves analysis measure is days' cash\* available to the utility as well as the actual available cash reserves. As noted in paragraph 50 for the enterprise risk profile assessment, size is also a factor in the utility's financial



risk profile. A utility may have cash reserves, for example, that are equivalent to a high days' cash number yet the actual cash on hand may be nominally very small. Both days' cash and actual cash are evaluated based on table 18. The resultant preliminary evaluations are applied to table 19 to produce the initial liquidity and reserves assessment.

93. For example, a utility with \$1.2 million of cash on hand, which for this example equated to 74 days of operating expenses, would receive a '3' for the days' cash ratio, and a '4' for the actual cash levels, based on table 18. When each preliminary evaluation is applied to the matrix in table 19, the initial liquidity and reserves assessment would be at the intersection of (3, 4), or an assessment result of '4.' Qualitative factors, if any, would then be applied to improve or worsen the '4' to arrive at the final liquidity and reserves assessment.
94. The liquidity and reserves assessments intended to measure how the utility's internal sources, such as cash reserves and cash flow generation, and external sources—namely undrawn capacity under committed lines of credit—provide it the working capital to fund immediate need on an ongoing basis. The undrawn, available portion of committed bank lines maturing beyond the next 12 months are included as cash for the calculations in table 18; draws are included with both long-term debt and, if due within the next 12 months, debt service.
95. The liquidity analysis looks not only to cash and equivalents that are unrestricted or unassigned (i.e., unencumbered by legally enforceable agreements and not earmarked for specific purposes) and immediately available, but also gives credit to reserves that are designated, but ultimately available, for any lawful purpose. Examples include renewal and replacement funds, RSF, or other similar set-aside (but not truly restricted) cash. The criteria make no distinction between reserves that can only be appropriated by action of the highest decision-making body, or reserves that can be appropriated by simple administrative action, so long as the reserves are ultimately lawfully available for any purpose regardless of the reporting entity's label on it as determined by Governmental Accounting Standards Board (GASB) statement No. 54. Issuers that do not use a generally accepted accounting principles (GAAP) basis of presentation, or for which the financial statements do not provide a transparent and explicit breakdown of cash, must provide details of their cash position.
96. Cash that we deem to be restricted—for example a debt service payment-to-be-made, customer deposits, a fiduciary responsibility like a pension or decommissioning fund, unspent bond proceeds, or is related to a posting of collateral, among other restrictions—will never be included in the analysis of liquidity. Any debt service reserve fund will also be excluded.
97. Intragovernmental borrowing sometimes occurs between the utility and its associated general government, or sometimes even between one division of the utility and another division. Cash in other funds in most cases would not be used to calculate the liquidity ratios, since those other funds likely have their own operating requirements. If a utility pools its cash with other major operating funds or governmental units, only cash that is truly the utility's will be counted in the calculation.

**Table 18**

Liquidity And Reserves Preliminary Evaluation		
Preliminary Assessment	Days' Cash	Actual Cash
1	Greater than 150	More than \$75 million
2	90 to 150	\$20 million to \$75 million

Table 18

Liquidity And Reserves Preliminary Evaluation (cont.)		
3	60 to 90	\$5 million to \$20 million
4	30 to 60	\$1 million to \$5 million
5	15 to 30	\$500,000 to \$1 million
6	Less than 15	Less than \$500,000

Table 19

Liquidity And Reserves Assessment						
Days' Cash Ratio, Preliminary Evaluation	Actual Cash On Hand, Preliminary Evaluation					
	1	2	3	4	5	6
1	1	1	2	2	3	4
2	1	2	2	3	3	4
3	2	2	3	4	4	5
4	2	3	4	4	5	5
5	3	3	4	5	5	6
6	4	4	5	5	6	6

**Qualitative Factors Positively Affecting The Initial Assessment Include:**

The utility is a distribution- and/or collection-only system with predictable wholesale costs, reducing the level of working capital the utility needs to maintain (see paragraph 98).

**Qualitative Factors Negatively Affecting The Initial Assessment Include:**

Liquidity is skewed by seasonality or is otherwise not indicative of actual averaged daily working capital levels.

The lack of a "pass-through" component to the rate structure if the utility could face the potential of rapid volatility in operating costs, such as raw-water or commodity costs, implying the utility is using its own cash to subsidize changes in expenses.

High refinancing risk over the next two to three years.

Exposure to contingent liabilities can cap this assessment at a '5' or a '6' (see paragraphs 99 to 101 and table 20).

Each applicable qualitative factor changes the initial assessment by one point, but the net total of all adjustments would never improve or worsen the initial assessment by more than two points unless an assessment cap of '5' or '6' is applicable.

98. In cases where the utility is a distribution- and/or collection-only system and off-balance sheet obligations are predictable, the utility's working capital requirements, and therefore liquidity levels, may not need to be as high. In those cases, the liquidity and reserves assessment may be improved by one point.
99. As described in "Contingent Liquidity Risks", published March 5, 2012, contingent liabilities\* correspond to explicit or implicit obligations that a utility may incur under certain circumstances. These risks could affect the utility's financial position if they materialize and if not otherwise offset by factors such as available liquidity, undrawn capacity under committed lines of credit, or market access. Furthermore, contingent liabilities might arise from a series of smaller risks that, by themselves, may not otherwise appear material, but could cascade in magnitude as proximity to the trigger or timing becomes less remote.
100. These criteria measure both contingent liabilities as a percentage of total long-term debt, as well as available reserves\* that may be legally utilized to mitigate some or all of the potential claims on the utility's cash.
101. For utilities assessed as a '5' on table 20, the liquidity and reserves assessments the lower of a one-point worsening of the initial assessment or a cap of '5'. For utilities whose table 20 initial assessment results in a '6', the liquidity and

reserves assessments capped at '6'. Any other result is not impactful to the liquidity and reserves assessment.

Table 20

Contingent Liabilities Assessment						
Available Reserves/Contingent Liabilities (%)	Contingent Liabilities/Total Long-Term Debt (%)					
	<20	20 to 30	30 to 40	40 to 50	50 to 60	>60
Above 250	--	--	--	--	--	--
200 to 250	--	--	--	--	--	--
150 to 200	--	--	--	--	--	--
100 to 150	--	--	--	--	--	5
50 to 100	--	--	--	--	5	6
Below 50	--	--	--	5	6	6

## C. Assessing Debt And Liabilities

102. The analysis of a utility's indebtedness is useful for a number of reasons: it can give insight into, for example, whether the utility is in the middle of a large growth- or rehabilitation-driven capital program. It can also be closely tied to the utility's rates and capacity for additional debt, which incorporates the analysis of the capital improvement plan (CIP). For the debt and liabilities assessment we use debt to capitalization\*.
103. The debt and liabilities assessments summarized in table 21.

Table 21

Assessment Of Debt And Liabilities	
Initial Assessment	Debt To Capitalization
1	Up to 20%
2	20% to 35%
3	35% to 50%
4	50% to 65%
5	65% to 80%
6	Greater than 80%
Qualitative Factors Positively Affecting The Initial Assessment Include:	
A relatively rapid roll-off of the long-term debt, with 65% or more coming due in 10 years or less, assuming there are no bullet maturities within that schedule that would realistically need to be refinanced. Total debt is not reduced by the presence of a debt service reserve fund.	
Qualitative Factors Negatively Affecting The Initial Assessment Include:	
Concerns about pension funding, which could be evidenced by a funded ratio of less than 80%, an actuarial study that is more than three years old, or a trend of not fully funding the annual required contribution for the pension or postemployment benefits (see paragraph 105).	

104. Given the recent emphasis on recognition and funding as on-balance sheet long-term liabilities for both pension (GASB Statements 67 and 68) and other postemployment benefits (OPEB; GASB Statement 45), consideration as to the utility's share of unfunded liabilities as measured on the balance sheet or accompanying notes will be noted. Although these obligations are debt-like in nature, they are not equivalent to debt because the magnitude and timing of the obligation are not completely certain based on factors such as actuarial assumptions, future benefit levels, and earnings of the fiduciary fund or trust. Similarly, the annual required contributions and pay-as-you-go actual cash

outlays are commonly treated as part of total personnel-related expenses if not accounted for in fiduciary funds or net transfers; these criteria focus on actual cash expended, not a noncash item such as one related to fair value reporting. Finally, the unfunded liability may lie elsewhere, as many utility employees are civil servants and therefore beneficiaries by way of the associated municipal general government's umbrella plans, rather than a utility-specific plan. If the utility is part of a larger general government rather than a stand-alone entity, we assume the utility's funded ratio is proportionally the same as that of the entire unit of government absent better information.

105. Nevertheless, unfunded or underfunded obligations can be a credit factor. The impact of pension and OPEB obligations depends on the degree to which such costs will likely escalate and whether the government has plans to address them. If the funded ratio for the largest plan in which the utility participates is not at least 80%, and if any of the following also is true, the assessment will be worsened by one point:

- The actuarial study is more than three years old, or
- The utility has a trend of not fully funding its pension ARC.

If there is no credible plan to address the obligation(s), the assessment will be worsened by two points.

## D. Assessing Financial Risk Management

106. Standard & Poor's evaluates established and ongoing management practices and policies in the seven areas under control of management that are most likely to affect credit quality. The FMA, like the OMA, ranges from (1) strong; (2) good; (3) standard; or (4) vulnerable. These areas and their weights are:

- Revenue and expense assumptions (10% of total FMA),
- Budget monitoring and interim reporting (10%),
- Long-term financial planning (15%),
- Long-term capital planning and asset management (20%),
- Investment and liquidity policies (20%),
- Debt management policies (10%),
- Transparency and accountability (15%).

107. To convert the FMA to a '1' to '6' scale, see table 22.

Table 22

Financial Management Assessment (FMA) Conversion To Six-Point Scale		
Observed Evaluation	FMA	Characterization
1.0 to 1.2	1	Strong
1.2 to 1.8	2	Good
1.8 to 2.5	3	Good
2.5 to 3.1	4	Standard
3.1 to 3.6	5	Standard
3.6 to 4.0	6	Vulnerable
Qualitative Factor Negatively Affecting The Initial Assessment		

Weak legal provisions when assigning issue credit ratings (see paragraphs 112 and 113).



108. The ability of a utility's management team to implement measures on a timely basis that will in our opinion proactively shape the utility's financial and operating condition can be crucial to maintaining credit stability. The assessment looks at the environment in which financial decisions affecting the utility occur. Generally, higher-rated entities will, over time, develop "best practices" that not only serve as guiding rules of thumb (or actual codified policies) to ensure continuity, but also ensure logical rhyme-and-reason to decisions that are made.
109. This assessment is based on a preponderance of evidence. Specifically, in our judgment are most, but not necessarily all, of the described characteristics applicable? A utility receives a neutral assessment if 'standard' for any sub-factors for which there is insufficient evidence to assign either a positive or negative assessment. However, some sub-factors may receive a negative assessment if a utility has a record of failing to disclose key relevant information.
110. By focusing on a utility's policies and practices, the FMA is not an evaluation of the competency or aptitude of individual finance professionals, nor is it an evaluation of management's ability to handle unique challenges. Moreover, the nature of the utility's governing body, the effectiveness of its governance practices, and issues of public policy involved in utility-related decisions are beyond the scope of this analysis. The FMA analyzes the environment in which financial decisions are made, including how both the ordinary and extraordinary are identified and addressed as relevant to the utility's ability to fund them and to what degree those risks are transparently reviewed and reported to ensure ongoing continuity. Financial results are assumed to manifest themselves in other visible ways and are addressed elsewhere in these criteria. The purpose of the focus on policies and practices is to evaluate the potential for credit quality to move away from that which is currently indicated by results.
111. Transparency and accountability in reporting, regardless of governance structure, is important in order to ascertain key quantitative data. States that require annual audited financial statements increase the likelihood that financial information will be available, and late audits will be noted. The use of GAAP usually enhances reporting detail and consistency across the sector, making it easier to have a sufficient uniform method of interpretation. States that allow cash accounting tolerate a lesser degree of completeness and consistency, and transparency suffers. As noted in "Alternative Financing: Disclosure Is Critical To Credit Analysis In Public Finance", published Feb. 18, 2014, a review of alternative financings and exposure to contingencies is a key component to understanding the entirety of all the risks and revenue requirements to which the utility is exposed.
112. We believe that creditor security can be weakened without a minimum set of covenants that constrain the utility's behavior. If we view the utility's legal provisions as sufficiently weak, the initial FMA would generally be worsened by one point. We believe that in the municipal utility sector those minimums generally include the below covenants and that they must exist at all times:
- A rate covenant to maintain an annual debt service coverage ratio of at least 1.0x or higher from recurring or ongoing revenues. However, where indentures permit the utility to use cash balances to achieve rate covenants, whether the cash is in the form of a rate stabilization account or other available funds, we factor the use of such funds into the ratings evaluation in accordance with paragraph 89;
  - An additional bond test that places some limits on the amount of increased leverage that will otherwise impair credit quality of the entity; and
  - Provisions establishing remedies for when a rate covenant is violated, such as a review of the current rates.

113. In addition, when the liquidity and reserves assessment for existing rated utilities is a '4' or worse, we will worsen the FMA by one point if there is no debt service reserve fund (DSRF) in an amount equivalent to at least half of the average annual debt service requirements. A DSRF typically provides immediately available supplemental liquidity in the event of pledged revenue insufficiency for the payment on the obligations then due.

- We would not recognize the utility as having a DSRF at all if it is only conditionally funded, such as a so-called "springing" DSRF. In such cases, this is, in our view, associated with conditions likely to come at a time when the utility is least able to afford additional demand on its cashflow.
- A DSRF may be satisfied with an unconditional surety policy or similar arrangements with another financial counterparty. If we believe that the counterparty would be unable to provide funding for the DSRF in a stress scenario, and the counterparty could not be easily replaced on a timely basis, we would not recognize the utility as having a DSRF.

114. The following tables detail each of the seven financial practice areas examined by the FMA.

115. The revenue and expense assumptions assessment evaluates if the organization's financial assumptions that support the annual budget and any financial forecast are realistic and well-grounded from both long-term and recent trend perspectives.

Table 23

**Revenue And Expense Assumptions Assessment**

<b>Strong</b>	Weather-normalized, formal historical trend analysis is performed and updated annually for both revenue and expenses; regular effort is made to determine whether one or more factors will cause revenues or expenses to deviate from their long-term trends over the next few years.
<b>Good</b>	Assumptions for most key line items in pro forma reports are analyzed and updated regularly, while others may assume simplistic changes over time such as linear or inflationary growth or flat from year to year.
<b>Standard</b>	Optimistic assumptions exist that, while supportable, add risk; assumptions are based on recent performance, but little evidence of questioning or validating assumptions exists.
<b>Vulnerable</b>	Assumptions neglect likely shortfalls, expense pressures, or other pending issues; assumptions lack prudent validation.

116. The evaluation of budget monitoring and interim reporting examines how, if at all, management reconciles year-to-date progress versus the budget adopted at the beginning of the fiscal year. This component evaluates if there are procedures for reviewing the budget based on updated information and actual-to-date performance to ensure fiscal targets and revenue requirements are met, and to what degree the interim reporting is disclosed.

Table 24

**Budget Monitoring And Interim Reporting Assessment**

<b>Strong</b>	At least quarterly budget surveillance is maintained to identify problem areas, which are publicly reported to the utility's governing body.
<b>Good</b>	Semiannual budget reviews exist; management identifies causes for variances between budget and actual performance and reports them to the utility's governing body.
<b>Standard</b>	A deviation from the budget is only reported because it has occurred; material variances between budget and actual performance are identified after they have occurred but not captured in projections for the remainder of the fiscal period.
<b>Vulnerable</b>	No formal process exists for regular review and timely updating of budget during the year.

117. The long-term financial planning assessment focuses on whether or not a financial forecast exists, the length of the planning horizon is, and if it includes a comprehensive identification of all reasonably likely upcoming revenue

requirements to determine how the utility will meet those revenue requirements, such as adjusting rates or implementing cost containment measures.

Table 25

Long-Term Financial Planning Assessment	
<b>Strong</b>	A regularly updated pro forma financial projection exists with a planning horizon of at least three years beyond the current budget year. The forecast includes future impacts to operating and maintenance (O&M) expenses and total financing obligations—both existing and probable—are identified. Impacts to rates or the ability to generate appropriate levels of pledged revenues through cost containment measures, for example, are clear. Planned use of designated cash reserves may occur infrequently, but structural balance is a clear goal.
<b>Good</b>	Pro forma projections exist and are comprehensive as described for a 'strong,' but are typically over a planning horizon of no more than the upcoming budget year plus one to two years into the future.
<b>Standard</b>	Multiyear projections are done but not updated until the last year of the current forecast. Multiyear projections are done, but with focus only on existing revenue requirements and exclude debt financing that is likely to be issued within the planning horizon, or ignore looming infrastructure investment needs such as growth or regulatory mandates.
<b>Vulnerable</b>	No long-term financial planning exists; O&M planning is done on a year-to-year (or budget-to-budget) basis. Near-term challenges are met with short-term fixes.

118. The asset management and long-term capital planning sub-factor assesses if a CIP exists, the length of the planning horizon, how and why projects make the list, and a summary of the most likely funding sources for the identified projects.

Table 26

Asset Management And Long-Term Planning Assessment	
<b>Strong</b>	Strategic and comprehensive planning focusing on the utility's infrastructure requirements, physical and other assets, and ability to continue to meet service levels is combined with likely sources of funding for identified projects; the plan and its priorities are regularly updated and transparently communicated. A characterization of "strong" will include planning not only the current budget year but also for at least five years beyond that.
<b>Good</b>	A comprehensive multiyear capital improvement program exists as described for a "strong" assessment but the planning horizon is less than five years.
<b>Standard</b>	The current-year capital expenditures are identified in the budget, but any future projects are currently nothing more than a wish list; a multiyear capital plan exists but funding sources are unclear or absent.
<b>Vulnerable</b>	Capital planning is done as needs arise, but no more frequently than on a year-to-year (or budget-to-budget) basis.

119. Seasonal cash flow needs, capital requirements, unbudgeted or unanticipated items, and contingency hedges all suggest at least some level of working capital cushion to be maintained. The investments and liquidity policies assessment evaluates if management has identified preferred cash reserves by way of an adopted policy or even a target. Liquidity policies and targets must be grounded in reality; these criteria would not give credit for a liquidity policy if it is set at a level so far above current or recent financial performance that we would not view it as attainable. Further, this sub-factor identifies if there are locally-adopted permitted investments guidelines, and if management reconciles and reports on its cash and investments with any regularity.

Table 27

Investment And Liquidity Policies Assessment	
<b>Strong</b>	The utility has embedded policies on the maintenance of minimum reserves, regardless of whether such reserves are deemed by management to be unrestricted or designated yet available for any lawful purpose; the policies are reflective of realistically attainable and sustainable levels. Permitted investment guidelines or policies exist, even if the utility's policies reflect or even mimic the state's policies. Reports on the utility's investment portfolio are prepared and reported to the utility's governing body at least quarterly.
<b>Good</b>	Targets for reserve levels exist by practice, are tied to meaningful levels, and are generally met or exceeded. While the utility's de facto cash management guidelines may defer to the state's permitted investment statutes, no local policy exists. The utility's management reports on its investments at least semiannually to its governing body.
<b>Standard</b>	Management has a target for a preferred level of cash reserves but it seems to be unrealistic given financial performance, or is so newly defined that it may be many years before such reserves are accumulated. Informal or nonpublished investment policies exist, are tracked by administrative staff but only irregularly or at the end of the fiscal year.
<b>Vulnerable</b>	Absence of informal reserve policies; even if they exist, they have been suspended or ignored. Weakness in cash flow adequacy has resulted in a greater appetite for risk in its investments. Investments are monitored irregularly and an external auditor deems there to be weakness or risk in cash handling and monitoring duties.

120. The debt management assessment evaluates if the utility has in place robust guidelines on the use of debt, excluding any covenant already established in its legal provisions. Examples include minimum savings thresholds for refunding bonds; stated preferences regarding final maturity, structure, and overall tenor of its debt, and the use of variable-rate debt, derivative products, floating-rate notes, or direct placement arrangements. If the debt instrument requires a financial institution counterpart, this assessment looks to any policies the utility may have regarding counterparty risk.

Table 28

Debt Management Policies Assessment	
<b>Strong</b>	Debt policies exist and are thorough and well-defined, even if they reflect or mimic state statutes. These policies are widely communicated and followed. While management has a general tendency toward risk-aversion, robust policies and sophistication among key finance officials make it likely that debt instruments that may require heightened levels of monitoring will make surprises a remote occurrence.
<b>Good</b>	Policies exist but may not address some key areas. In the absence of policies, management defers to state statutes that themselves are strong; some of the utility's financing obligations may be of the type that require a heightened level of monitoring, and management has some reliance on external consultants to help ensure remoteness of risks associated with those particular debt instruments.
<b>Standard</b>	Legal provisions and state laws are the sole guiding influences on management's use of and attitudes toward debt, or any internal guidelines are not meaningful beyond very basic or minimum debt management or are identified as unwritten goals.
<b>Vulnerable</b>	Absence of basic policies or clear evidence that basic policies are not being followed. Nontraditional financing options are utilized but there is no internalized knowledge, or utility management relies very heavily on consultants to monitor or manage the risk.

121. The transparency and accountability sub-factor assesses whether or not management has established for the independent review of important financial and operational data as well as the quality, regularity, and timeliness of its continuing disclosure practices, even for things that the utility may not be legally required to disclose. Even with annual audited financial statements produced according to GAAP, nonpublic disclosure of an alternative financing such as a direct placement arrangement would result in an assessment of 'vulnerable' for this sub-factor.



Table 29

Transparency And Accountability Assessment	
<b>Strong</b>	Management produces annual independently audited financial statements that comply with GAAP. Alternative financings and exposure to contingent risks are voluntarily disclosed as they are entered into, and overall continuing disclosure is deemed as robust and timely.
<b>Good</b>	Management produces annual independently audited financial statements that comply with GAAP. Alternative financings, exposure to contingent risks, and overall continuing disclosure are done, but generally only on an annual basis.
<b>Standard</b>	Management produces independently audited annual financial statements, but on a cash or other non-GAAP basis of presentation. Audits typically are released more than 180 days after fiscal year-end. The disclosure of alternative financings and contingent risk is not always timely but generally updated on an annual basis.
<b>Vulnerable</b>	Management produces independently audited financial statements, but cash or other non-GAAP basis of presentation is permitted. Audits typically are late or not produced each year. Regardless of frequency and quality of the audited financial statements, alternative financings and contingent risk are not voluntarily disclosed or overall continuing disclosure is poor and not timely.

## VIII. RELATED CRITERIA AND RESEARCH

### Related Criteria

- USPFCriteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- GeneralCriteria: Rating Government-Related Entities: Methodology And Assumptions, March 25, 2015
- Methodology: Master Limited Partnerships And General Partnerships, Sept. 22, 2014
- Country Risk Assessment Methodology And Assumptions, Nov. 19, 2013
- Ratings Above The Sovereign: Corporate And Government Ratings—Methodology And Assumptions, Nov. 19, 2013
- Key Credit Factors For The Regulated Utilities Industry, Nov. 19, 2013
- Corporate Methodology, Nov. 19, 2013
- GeneralCriteria: Methodology: Industry Risk, Nov. 20, 2013
- Timeliness Of Payments: Grace Periods, Guarantees And Use Of 'D' And 'SD' Ratings, Oct. 24, 2013.
- Local Government GO Ratings Methodology And Assumptions, Sept. 12, 2013.
- Criteria For Assigning 'CCC+', 'CCC', 'CCC-', And 'CC' Ratings, Oct. 1, 2012
- Contingent Liquidity Risks In U.S. Public Finance Instruments: Methodology And Assumptions, March 5, 2012
- Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- Methodology: Rating Approach To Obligations With Multiple Revenue Streams, Nov. 29, 2011
- Principles Of Credit Ratings, Feb. 16, 2011
- Stand-Alone Credit Profiles: One Component Of A Rating, Oct. 1, 2010
- Use Of Credit Watch And Outlooks, Sept. 14, 2009
- Rating Implications Of Exchange Offers And Similar Restructurings, May 12, 2009.
- Appropriation-Backed Obligations, June 13, 2007.
- Wholesale Utilities, May 24, 2005

### Related Research

- RFC Process Summary: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- Credit FAQ: An Overview Of Standard & Poor's Updated Methodology For Rating U.S. Public Finance Waterworks, Sanitary Sewer, And Drainage Utility Systems, Jan. 19, 2016
- Credit Rating Model: Water/Sewer Credit Scoring, Jan. 19, 2016
- Credit FAQ: All-In Coverage, Transfer Payments, And Credit Quality, Jan. 19, 2016
- Affordability As A Component Of U.S. Water And Sewer Utility Ratings, Jan. 19, 2016



- Management's Key For U.S. Water Utilities To Align Operations And Finances, Jan. 19, 2016
- The Broad And Diverse Economy Adjustment: 2015 Updated Scores For U.S. Metropolitan Statistical Areas Based On Local Government GO Criteria, Dec. 15, 2015
- 2014 Annual U.S. Public Finance Default Study And Rating Transitions, May 5, 2015
- Alternative Financing: Disclosures Critical To Credit Analysis In Public Finance, Feb. 18, 2014
- Credit FAQ: U.S. Public Finance Ratings And Criteria For Ratings Above The Sovereign, Dec. 19, 2013
- U.S. Public Finance Rating Characteristics, March 7, 2008

## IX. Appendix I: Glossary Of Key Terms

In our criteria, "utility" refers to a municipally-owned utility or other legally authorized political subdivision that provides raw and/or potable water, sanitary sewer, and/or drainage services at the retail level, or with wholesale (sales for resale) service not more than 49% of total operating revenues. The utility is most often, but not always, an enterprise within a larger general government, or an independent utility with its own governing board.

"Sewer", "sanitary sewer", and "wastewater" are used as interchangeable terms.

"Drainage", "stormwater", and "storm sewer" are used as interchangeable terms.

The following terms are based on the definitions provided in the article "Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations," published on Nov. 29, 2011:

### Other terms

*Annual required contribution:* The actuarially calculated amount that the utility (or its sponsoring plan provider) must make to completely fund its next associated payment on its pension and/or OPEB liability.

*Available reserves:* Unrestricted cash and equivalents plus any working capital that resides on the utility's balance sheet and is lawfully available for any purpose plus any undrawn capacity under committed lines of credit. Examples include emergency and contingency funds, rate stabilization reserves and other cash that may be designated in purpose but not restricted for debt service, fiduciary purposes, or asset retirement obligations.

*Contingent liabilities:* Variable-rate demand bonds, commercial paper, bullet payments due within five years, bonds with mandatory tender dates in five years or less, direct bank debt with acceleration clauses, the potential for a wholesale provider to reallocate its costs to the utility in an unbudgeted or otherwise unpredictable manner or the obligation is not based on an availability payment structure, swap or related termination payments if the current rating is two notches or less from the termination trigger, and other identifiable contingencies.

*Days' cash:* A measure of cash, investments and equivalents, calculated as follows:

**Numerator:** All unrestricted cash and equivalents plus any reserves that are designated, but ultimately available for any lawful purpose. May include long-term investments so long as they also have no restrictions and are not illiquid.

**Denominator:** 1/365th of income statement operating expenses. For operating expenses, depreciation, amortization, and other non-cash items, such as those that update a fair value on a derivative or pension obligation, are excluded. Transfers are included in operating expenses.

*Debt to capitalization:* A measure of the relative leverage of the utility, as follows:

**Numerator:** The sum total of all short- and long-term debt both on the utility's balance sheet and that which is allocable to the utility, including draws on credit lines, commercial paper notes and other loans, debt or material obligations even if not rated by Standard & Poor's.

**Denominator:** The total debt as calculated in the numerator plus the utility's net position, which we view as public sector accounting's closest approximation of equity.

*Dependent population:* The total population of the service area that is younger than 15 years old plus the total population of the same area older than 65 years old.

*GAAP:* Generally accepted accounting principles are the common set of accounting principles, standards, and procedures that most governments and utilities in the U.S. follow. GAAP is determined by the Governmental Accounting Standards Board.

*Nonrevenue water:* As defined by the American Water Works Assn., the sum total of leaks, water that is incorrectly billed (whether because of an inaccurate meter or human error), theft, unbilled, and unmetered water such as that which is used for fire protection or line flushing, and unbilled but metered water such as water provided to schools or churches that because of local policy is provided free of charge.

*Off-balance sheet:* An obligation for which the utility is legally responsible, but which may appear only in the rated utility's financial statement notes, or another entity's balance sheet, but not within the long-term debt of the rated utility itself.

*Other postemployment benefits:* Health care, along with dental, vision, disability, long-term care, and life insurance benefits offered to qualified retirees of the utility.

*Self-supporting debt:* Debt is considered self-supported if the debt issued by the affiliated unit of government on behalf of the utility--such as a city issuing GO or special tax to fund projects for the betterment of its water system--is fully paid by practice from the utility's surplus net revenues. Full self-support means surplus net revenues must be at least as large as the principal and interest payments then due on that tax-secured debt.

*Tax-secured debt:* Debt that is secured by a full faith and credit general obligation pledge (whereby revenues are commonly derived by the levy of a property tax) or special tax--such as a local option sales tax or parcel tax.

## X. Appendix II: Municipal Rating Calibration

122. We calibrate our utility rating criteria based on our analysis of the history of defaults, the impact of changes in regulatory mandates over time, our view of the industry's essentiality, the industry's sensitivity to economic cycles, and the credit strength of this sector compared with that of other sectors.
123. Municipally-owned utilities and utility authorities are the monopolistic provider--naturally and often statutorily--of services to their defined customer base. We generally view them as having a business profile that is low in risk and does not stray from its core business of providing retail waterworks and/or sanitary sewer services. We have seen that the local decision-making body, such as the city council or utility board, is usually the one entity solely responsible for approving and implementing rate adjustments, as only a few states require municipal rates to be approved by a utility

regulatory body such as a public service commission. We do not view rate regulation as an impediment to credit quality unless there is clear evidence otherwise as measured by the timeliness and magnitude of requested versus approved rate cases. Municipal utilities, in our view, tend to operate on a cost recovery basis, not a rate-of-return model; any kind of return on investment usually comes in the form of a transfer payment to the general government, not a dividend derived from a profit margin.

124. Defaults and bankruptcy filings among U.S. municipal utilities are extremely rare. Of the 73 nonhousing defaults from 1986 through 2014 among all U.S. public finance issuers, only three (4%) were utilities. While rare, we observed that these defaults were associated with credit-specific characteristics such as weak financial management or a deterioration in the local utility or local government's financial condition, which are the most common indicators of distress.
125. Within U.S. public finance, water and sewer utilities currently comprise about 7% of Standard & Poor's total ratings. The federal courts' own data note, "In the more than 60 years since Congress established a federal mechanism for the resolution of municipal debts, there have been fewer than 500 municipal bankruptcy petitions filed." The vast majority of these were real estate-related special districts, sanitation entities, or industrial development authorities. The EPA's statistics show that there are over 50,000 community water systems in the U.S., about 85% of which are publicly owned. Therefore, we believe U.S. municipal utility defaults are infrequent. We do not expect a change in the historically extraordinarily low default rate in this sector. When there is a rapid deterioration, we do expect to continue to see multi-notch downgrades. Please see "The Time Dimension Of Standard & Poor's Credit Ratings", published Sept. 22, 2010, for a description of potential ratings migration.
126. This assumption is further supported by research, cited in "Local Government GO Ratings Methodology And Assumptions", published Sept. 12, 2013, that the broader historical rate of municipal defaults, dating back over a century in works by Hempel, Hillhouse et al, is extremely low.
127. While generally not rate-regulated, the U.S. municipal utility sector is still highly regulated. Water and sewer utilities are required to comply with numerous environmental regulatory standards at the federal and state levels to ensure public health and safety. The high level of regulation is, in our view, indicative of a public perception that utilities have an essential purpose. The regulatory framework, capital-intensive nature of utilities, and monopolistic nature preclude competition. However, this does not guarantee financial or operational performance. Failure to meet regulatory or environmental compliance could have larger implications and possibly impair credit quality. Our ratings are calibrated to seek a balance between our view that the sector is essential and the fact that each utility is not guaranteed to perform at a certain level.
128. The utility sector, in general, tends to have less susceptibility than other sectors to economic cycles due to the relatively price-inelastic nature of water and belief that sewer service is necessary for public health. We have observed that utilities derive nearly the entirety of operating revenues from local user charges and therefore are not beholden to flat growth in property tax bases or even year-over-year declines in local option sales tax revenues or cuts in state-shared programs. Operating revenues flow directly to the utility, not first to the sovereign central government (the U.S. federal government) or state government, and utility managers enjoy significant revenue, expense, and overall budgetary autonomy. Some local service areas have a principal utility customer that is also a key local or

regional employer, and the utility's financial health may sometimes rise or fall with the prospects of that employer. However, as measured by the number of metered accounts, most utility systems are disproportionately residential in nature, which often tends to create diversity among operating revenues regardless of where in a cycle the local economy is.

## **XI. Appendix III: An Overview Of The History Of Municipal Water Consumption And Billing In The U.S.**

129. Local and regional water conservation programs--both voluntary and mandatory--have for decades succeeded in reducing per capita per day consumptive use, especially in the South and West. Even the federal government, with the Energy Policy Act of 1992, established water-efficient standards for all indoor plumbing fixtures manufactured after 1994 (Section 123, Energy Policy Act of 1992. Public Law 102-486, 102nd Congress. Washington, D.C., Oct. 24, 1992). There is therefore no broadly applicable direct correlation between economic growth and system demands. However, economic fundamentals are still a critical proxy for the current and likely future ability of the customer base to support utility operations and its revenue requirements, as municipal utilities tend to derive nearly all operating revenues from the local rate base.
130. Regardless of the condition of the utility's service area economy, the relative ability of its customer base to pay the utility bill has remained important not only to credit quality but also to the sector itself. Both the EPA and the water utility industry's leading professional organization, the American Water Works Assn. (AWWA) have developed guidelines for measuring affordability.
131. AWWA's "Principles of Water Rates, Fees and Charges: Manual M-1 of Water Supply Practices (6th Edition, 2012)", often cited by the municipal utility industry as the definitive guide for rate studies, notes: "Unfortunately, it is neither economically practical nor often possible to determine the cost responsibility and applicable rates for each individual customer served" (page 75). For utilities, then, AWWA notes that the household is the base unit of measurement for virtually every component of a water utility, such as billing, pumping, water supply and capacity factors. The EPA also uses household, not per capita, income for measuring rate affordability.
132. As first discussed in section 1416(a)(1) of Public Law 93-523, commonly known as the Safe Drinking Water Act of 1974, a state which has primary enforcement powers may grant water systems an exemption from the SDWA "due to compelling factors (which may include economic factors)" The exemptions are not permanent and require the utility to demonstrate that it is unable to make the improvements to meet any such applicable regulatory requirements within a certain timeline and/or the service area is economically disadvantaged.
133. Such exemptions were more fully developed by the federal government with the 1986 and 1996 amendments to the SDWA. Around this same time, the EPA also developed its Interim Economic Guidance for Water Quality Standards Workbook, (EPA 823-B-95-002, March 1995), specifically section 4, and Combined Sewer Overflows--Guidance for Financial Capability Assessment and Schedule Development (EPA 832-B-97-004, February 1997), specifically section 3, to develop affordability criteria for sewer systems, including the residential indicator, which measures the annual utility burden as a percentage of median household income, and a number of additional secondary screening criteria

such as the local unemployment rate versus the national rate.

134. Because these affordability measures are generally accepted and used throughout the industry—even as we acknowledge they are only guidelines and targets—they are also used in our criteria. This methodology, however, is based on median household effective buying income since it better captures after-tax, disposable income, or take-home pay. EPA's secondary screening affordability criteria also take into account the household tax burden (Combined Sewer Overflows--Guidance for Financial Capability Assessment and Schedule Development (EPA 832-B-97-004; February 1997, pp. 32-36), so we view the approach as consistent.
135. It is common practice in the U.S. to measure retail billing units in volumes based either on per 1,000 gallons of water or per hundred cubic feet (ccf). Eight ccf's are equal to 5,984 gallons, or about 6,000 gallons. However, it is currently uncommon for a utility to measure billings in increments of per 500 gallons, so these criteria also round up to the closest equivalent.
136. Regardless of the unit of measurement used by the utility for billing purposes, it is common for there to be some variance between how much water the utility pumps into the system and how much actually gets billed. Most often this is due to leaks in the distribution or storage infrastructure, as well as aged or malfunctioning meters that underrepresent the actual volume of water used by that account. By the time the water leaves the treatment plant, the utility has incurred all the costs associated with that water, such as rights for the raw-water source and the treatment, transmission, and distribution expenses. The AWWA (as defined in its M-36 manual) uses an array of water resources as well as operational and performance indicators. Taken into account are both the volume of the losses and their cost impact. AWWA has stated that the most useful performance indicator for financial purposes is the nonrevenue water, with a financial measure characterized as the cost impact of all losses divided by total system operating costs. Standard & Poor's criteria uses as evidence nonrevenue water volume and cost, the quality and frequency of water system audits, and anecdotal evidence from management.
137. Utility billings and financial metrics can and often do vary from year to year for a variety of reasons, with the most common examples being:
- Weather—temperatures and precipitation patterns can cause a pronounced variance to annual usage and revenue in either a favorable or unfavorable direction, and no widely accepted normalizer exists in the sector, such as heating or cooling degree days in the electric sector;
  - Debt service schedule—utility's debt service payments are not always the same from year to year, and can and often do change very significantly into the future; and
  - Infrastructure investment requirements—capital spending needs, whether for growth, rehabilitation, or regulatory mandates, or to address short-term emergencies.

## **XII. Appendix IV: An Overview Of Irrigation Districts**

138. Irrigation districts are special districts that share a broad range of common features with other rated water districts; however, certain credit characteristics are materially different and therefore affect our evaluation of credit quality. In contrast to water utilities that primarily provide water for municipal and industrial uses, irrigation districts often have operations that are limited to the production and distribution of water supply for agricultural purposes. Customers of



these districts are predominantly farms of varying size for which the cost of water supply is one input into the production of agricultural goods ranging from cotton to almonds. In this context, the service area's income levels and unemployment rates are less meaningful, and we focus more broadly on the fact that the customer base is concentrated in a single industry--agriculture--that can be susceptible to unique risks such as poor weather conditions such as drought and frost, or pests, which may materially affect the ability of customers to pay their bills timely and in full.

139. Operationally, irrigation districts often provide a supplemental source of supply rather than a primary source of supply for customers. District activity typically focuses on the distribution of raw water with no treatment required since water is utilized by customers for agricultural production rather than potable consumption. Many, although not all, farms have private groundwater wells that serve as a source of supply, and the cost of water from this source is typically calculated based on the depth to groundwater in the aquifer, the electricity cost to operate pumps to produce the lift required to extract groundwater, and a nominal allocation of maintenance expense for the pumps. We believe that the availability of an inexpensive alternative water supply materially constrains an irrigation district's revenue raising flexibility since in the short term we anticipate that businesses will select the lowest cost of supply all else equal. Also, while irrigation districts often have some of the oldest established water rights to a given surface water source, others depend on contractual rights or permanent water rights to supply from large scale water projects--such as the U.S. Bureau of Reclamation's Central Valley Project or the California State Water Project--that may be subject to allocation methodologies that prioritize supply for municipal uses over agricultural uses due to public health concerns.
140. We have observed that limitations on sources of supply during drought periods may result in volatile debt service coverage patterns, including periods of insufficiency, that are generally inconsistent with the vast majority of rated water utilities and we view as a material credit weakness for this portion of the sector. Furthermore, while capital needs for irrigation districts are often limited to renewal and replacement of existing infrastructure, we have observed that irrigation districts may have unexpected and sizable capital needs for the acquisition of additional water rights or development of water banking capabilities--either internal capability development or participation in an external water bank--that make it very difficult to predict future capital spending patterns.

These criteria represent the specific application of fundamental principles that define credit risk and ratings opinions. Their use is determined by issuer- or issue-specific attributes as well as Standard & Poor's Ratings Services' assessment of the credit and, if applicable, structural risks for a given issuer or issuer rating. Methodology and assumptions may change from time to time as a result of market and economic conditions, issuer- or issue-specific factors, or new empirical evidence that would affect our credit judgment.

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## Summary:

San Luis & Delta-Mendota Water  
Authority, California  
Westlands Water District; Joint  
Criteria; Water/Sewer

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## Summary:

# San Luis & Delta-Mendota Water Authority, California

## Westlands Water District; Joint Criteria; Water/Sewer

Credit Profile		
US\$40.87mil rfdg rev bnds (WestlandsWtr Dist) ser 2013A due 03/01/2043		
LongTermRating	A+/Stable	New
Westlands Wtr Dist wtr & swr		
UnenhancedRating	A+(SPUR)/Stable	Affirmed

## Rationale

Standard & Poor's Ratings Services assigned its 'A+' long-term rating to San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds (DHCCP Development Project). At the same time, we affirmed our 'A+' long-term rating on the authority's series 2009A revenue notes and our 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s revenue bonds and certificates of participation (COPs). The outlook on all ratings is stable.

We also affirmed our 'AAA/A-1+' rating on the district's series 2008A adjustable-rate refunding revenue COPs. The long-term component of the rating reflects the combination of the district's creditworthiness and credit enhancement in the form of a letter of credit (LOC) provided by Rabobank N.A. (not rated) and a confirming LOC provided by Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (Rabobank Nederland), New York Branch (AA-/Stable/A-1+). This rating is based on Standard & Poor's joint criteria assuming a low credit correlation between the obligor and the LOC providers. Furthermore, the short-term component of the rating is based on the liquidity support provided by the LOCs.

The ratings reflect our view of the district's:

- Large and agriculturally diverse service area;
- Rate structure that collects half of the district's operations and maintenance (O&M) expenses through water rates and half through land-based charges, which enhances revenue stability;
- Debt service coverage (DSC) that is projected to range from adequate to good during the next four fiscal years; and
- Strong cash reserves.

In our view, these strengths are partially offset by the district's:

- Dependence on volatile water allocations from the U.S. Bureau of Reclamation's (USBR) Central Valley Project (CVP),

- Anticipated need for significant additional leverage to finance its share of upcoming projects related to the Delta Habitat Conservation and Conveyance Project (DHCCP),
- Small agricultural customer base of 700 customers over which to spread fixed costs, and
- Adequate total DSC when taking into consideration the district's subordinate 1965 contract payments to USBR.

We understand that the 2013A bonds are being issued to refund a portion of the authority's 2009A revenue notes.

We view the bond provisions as adequate. The bonds are secured by authority revenues, which consist of payments under activity agreements by the member agencies participating in the financing. However, we understand that Westlands Water District is obligated under its activity agreement to pay 100% of principal and interest when due, and that the district is reimbursed from authority revenues as participating member agencies make payments to the authority. Therefore, our analysis focuses solely on the district although the district's allocable share of the 2013A bonds' debt service is about 82%. The district's activity agreement payments are treated as a district operating expense, and the payments are senior in priority to the district's obligations with respect to its bonds and COPs. We understand that a debt service reserve is expected to be funded from bond proceeds and provide additional liquidity for the 2013A bonds.

The district was formed in 1952 under the California Water District Law to furnish irrigation water and drainage service to farmers within the district's boundaries. Located on the west side of the San Joaquin Valley, the district's service area spans 614,700 acres of level agricultural land in Fresno and Kings counties, 568,500 acres of which are irrigable. The overall customer base is small, at about 700 water users, and consists of larger farms that average 800 to 900 acres in size. These farms produce 60 different crops including cotton, tomatoes, pistachios, cantaloupes, lettuce, almonds, and onions. Permanent crops accounted for about 18% of total irrigable acreage and 30% of crop value in calendar year 2011, the most recent year for which data are available. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district. We consider the customer base to be very diverse based on the leading 10 customers paying about 10.4% of total operating revenues, and no customer paying more than about 3.5% of total operating revenues. The district operates and maintains a very water-efficient underground piped distribution system through which all deliveries to water users are measured by reading flow meters twice a month.

The district's primary water source is surface water supplied through the USBR's CVP. The initial 1963 contract between the district and USBR specified a 900,000 acre-feet contract water entitlement that was subsequently increased to 1.15 million acre-feet. The agreement expired at the end of 2007, and the district and USBR entered into an Interim Renewal Contract (IRC) that has been twice extended to the current termination date on Feb. 28, 2014. Before entering into a new long-term agreement, USBR is required to complete certain environmental reviews, and district management does not believe that these environmental reviews will likely be completed prior to the current IRC expiration date. Management has requested a renewal of the IRC and anticipates that it will be renewed again under substantially the same terms and conditions prior to the current expiration date. The district's total water demand exceeds its CVP contract water entitlement, and additional water supply is provided through supplemental water purchases and groundwater pumping. Due to significant variations in California hydrology, CVP allocations have varied widely, ranging from 10% to 100% of contract entitlement, and the allocation for fiscal year 2014 is currently 20%.



Operating revenues are generated through water sales and acreage charges. We understand that the district's water rates are set annually to pass through all water purchase costs and also recover half of the district's O&M costs. The balance of O&M costs are recovered through acreage charges. We view this structure as prudent given the significant variation in water sales and the volatility of CVP water allocations. Payment for water and power is due monthly by the 25th day following the month end of use, and no further water deliveries are made if payments are not received when due. If monthly payments are not made, amounts due may be added to the annual acreage charges. Water rates may be changed midyear if the water supply situation changes after the start of the fiscal year, which runs from March to February. Rate changes are subject to Proposition 218, but management reports that the district has historically faced minimal resistance to rate changes from land owners -- the most significant protest was a mere 2% of the eligible votes by acreage.

We understand that there are significant potential capital expenses related to the Bay Delta Conservation Plan and the DHCCP although there are no significant capital needs within the district at this time. A record of decision is anticipated in early 2014, after which Phase I of the DHCCP may proceed with design and engineering work that is estimated to cost about \$1.8 billion. Construction of the project (Phase II) is scheduled to commence in 2017 and continue over a 10-year period at an estimated cost of \$13.0 billion. Management currently anticipates participating in Phase I of the DHCCP, although a decision has not yet been made and management continues to monitor project planning and development. If the district decides to participate in Phase I, we understand that financing arrangements may be considered as early as 2014. We understand that the cost of the project will be shared between the state participants and the federal participants, and that the district's share of the federal portion is estimated to be about 25%.

The district's financial performance has been predominantly strong since 1993, in our view, but financial performance is subject to thinner margins during drought years. For example, in fiscal year 2010 the CVP allocation was just 10% of water contract entitlements, and coverage of the district's activity agreement payments and senior debt obligations was good, in our view, at 1.25x. At the same time, the district's total DSC, which includes subordinate contract capital repayments to USBR, narrowed to just 1.0x, which we consider marginally adequate. The district's financial performance improved the following year driven primarily by increased water availability due to wet weather. In fiscal years 2011 and 2012, coverage of activity agreement payments and senior debt obligations was 1.69x and 1.59x, respectively, while total DSC was 1.38x and 1.31x, respectively. Based on unaudited fiscal year 2013 results, we calculate coverage of activity agreement payments and senior debt obligations of 1.32x and total DSC of 1.08x. Weaker performance for the year was driven primarily by lower water sales. During the next four fiscal years, based on management's projections that assume a 40% allocation of the district's contract water entitlement, we calculate coverage of activity agreement payments ranging from 5.44x to 9.06x, while coverage of both activity agreement payments and senior debt obligations ranges from 1.22x, which we consider adequate, to 1.40x, which we consider good. During the same period, we calculate total DSC ranging from 1.02x to 1.15x, both of which we consider adequate.

The district is also a party to a LIBOR-based interest rate swap agreement with a notional amount of \$25.5 million and a mark-to-market value of negative \$3.6 million as of Feb. 28, 2013. The swap agreement was initially entered into in conjunction with the issuance of the 2005 BCOPs with the intent to synthetically fix the interest rate on those

certificates. The 2005B COPs were subsequently refunded with the 2008A COPs, and the interest rate swap is now associated with the 2008A COPs.

The district's liquidity position is strong, in our view. The district's cash and cash equivalents at the end of fiscal year 2012 was \$69.9 million, which represented 222 days of operating expenses; however, we understand that a portion of this balance is restricted and that the unrestricted portion was \$45.6 million, or 145 days, which we also consider strong. Based on unaudited results, management reports cash and cash equivalents at the end of fiscal year 2013 increased to about \$90.9 million, and management attributes the change in cash position primarily to increased prepayments by water users (\$7 million) and deferred revenue for supplemental water (\$7 million). We understand that the district maintains a strong liquidity position in part to enable it to opportunistically acquire water rights or otherwise firm up its water supply.

## Outlook

The stable outlook reflects our view of the district's role as the sole provider of supplemental water to a very large agricultural area that lacks adequate local water supply to meet demand. During the two-year outlook period, we anticipate that a record of decision will be entered regarding the DHCCP, and that financing arrangements related to Phase II of the DHCCP will be finalized. We could lower the rating if increased leverage is not balanced by rate increases that are adequate to maintain existing margins and financial performance, or if liquidity is significantly drawn down as a financing source. We could raise the rating if the district operates with significantly wider margins on a sustained basis or is able to materially enhance water supply stability.

## Related Criteria And Research

- USPFCriteria: Key Water And Sewer Utility Credit Ratio Ranges, Sept. 15, 2008
- USPFCriteria: Standard & Poor's Revises Criteria For Rating Water, Sewer, And Drainage Utility Revenue Bonds, Sept. 15, 2008
- U.S. State And Local Government Credit Conditions Forecast, April 4, 2013

Ratings Detail (As Of May 17, 2013)		
Westlands Wtr Dist adj rate rfdg rev COPs ser 2008A		
Long Term Rating	AAA/A-1+	Affirmed, Removed from Credit Watch
Unenhanced Rating	A+(SPUR)/Stable	Affirmed
Westlands Wtr Dist wtr & swr (AGM)		
Unenhanced Rating	A+(SPUR)/Stable	Affirmed
Westlands Wtr Dist Wtr & Swr rev certs of part		
Unenhanced Rating	A+(SPUR)/Stable	Affirmed
San Luis & Delta-Mendota Wtr Auth, California		
Westlands Wtr Dist, California		
San Luis & Delta-Mendota Wtr Auth (Westlands Wtr Dist) rev nts (Dhccp Dev Proj) ser 2009A		
Long Term Rating	A+/Stable	Affirmed

Ratings Detail (As Of May 17, 2013) (cont.)

Many issues are enhanced by bond insurance.

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**To:** Weil, Chloe[chloe.weil@standardandpoors.com]  
**From:** Bobbie Ormonde  
**Sent:** Tue 3/15/2016 5:40:41 PM  
**Subject:** Re: S&P Review of Westlands Water District

Chloe,  
Our team will include Thomas W. Birmingham, Dan Pope, Doug Brown, Dave Houston and myself. If checking identification, my first name is Balbina. I go by Bobbie at work. We are working on responses to S & P's questions. Look forward to our meeting on Friday.

Sent from my iPhone

On Mar 14, 2016, at 3:09 PM, "Weil, Chloe" <chloe.weil@standardandpoors.com> wrote:

> Good afternoon-  
>  
> As I mentioned on Friday, we placed the district on credit watch, pending the review, with a goal to complete the review by March 25th. I am attaching a copy of the rating action for your information.  
>  
> Also, can you let me know the names of all of the attendees for the meeting on Friday? We will need to provide to our building security.  
>  
> Thank you, we appreciate your time gathering the data for our review.  
>  
> Best,  
>  
> Chloe  
>  
> [cid:image001.jpg@01D17E02.2AE0E070]  
>  
> Chloe Weil  
> Director, U.S. Public Finance Infrastructure Group  
>  
> Standard & Poor's Ratings Services  
> One California Street, 31st Floor, San Francisco, CA 94111  
> T 415.371.5026 | F 415.371.5090  
> chloe.weil@standardandpoors.com<mailto:chloe.weil@standardandpoors.com>  
> www.standardandpoors.com<http://www.standardandpoors.com/>  
>  
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>  
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>  
> From: Bobbie Ormonde [mailto:bormonde@westlandswater.org]  
> Sent: Friday, March 11, 2016 9:22 AM  
> To: Weil, Chloe (Analytical)  
> Subject: RE: S&P Review of Westlands Water District  
>  
> Chloe,  
>  
> We are in the process of gathering the data requested. As for the date of our meeting, I am awaiting availability of a few members of our team. I will get back to you today.



>  
> Bobbie Ormonde  
> Director of Finance and Administration  
> Westlands Water District  
> 3130 N. Fresno Street  
> Fresno, CA 93703  
> (559) 241-6203  
>  
>  
>  
>  
> From: Weil, Chloe [mailto:chloe.weil@standardandpoors.com]  
> Sent: Thursday, March 10, 2016 6:23 PM  
> To: Brown, Douglas S.; Bobbie Ormonde  
> Cc: Dyson, Paul  
> Subject: S&P Review of Westlands Water District  
> Importance: High  
>  
> Good evening Bobbie -  
>  
> As I previously indicated, we will be working on a full review of the rating on the District's revenue bonds as a result of yesterday's SEC enforcement action. We last conducted a full review of the District in relation to the May 2013 issuance by the San Luis & Delta-Mendota Water Authority of the series 2013A bonds.  
>  
> I am attaching our rating report from 2013 as a point of reference, and I am sending an attached list of key questions for your consideration to help expedite our credit review. As you can see, the bulk of our questions relate to the accounting treatment of the adjustments made in 2010 and 2012, and making sure we understand each of the revenue items in the fiscal 2015 audit - but we are also focused on the District's financial projections over the next five years.  
>  
> We are hoping to schedule a meeting with the District (either in person or by phone) on March 18th or 21st to give us enough time to finalize the rating by March 25th. We will wait to hear from you for which date works best for the District.  
>  
> Finally, I am also including a copy of our new water/sewer criteria that we released in January.  
>  
> Regards,  
>  
> Chloe  
>  
> [cid:image001.jpg@01D17E02.2AE0E070]  
>  
> Chloe Weil  
> Director, U.S. Public Finance Infrastructure Group  
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> Standard & Poor's Ratings Services  
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> www.standardandpoors.com<http://www.standardandpoors.com/>  
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>

>

> From: Brown, Douglas S. [mailto:DBROWN@SYCR.com]

> Sent: Thursday, March 10, 2016 1:01 PM

> To: Weil, Chloe (Analytical)

> Cc: Bobbie Ormonde

> Subject: WWD

>

> Chloe,

>

> Per our conversation:

>

> Bobbie Ormonde

> District Director of Finance & Administration

> bormonde@westlandswater.org<mailto:bormonde@westlandswater.org>

> (559) 241-6203

>

>

> Douglas S. Brown

> [cid:image002.png@01D17E02.2AE0E070]<http://www.sycr.com/>

>

>

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> dbrown@sycr.com<mailto:dbrown@sycr.com> | sycr.com<http://www.sycr.com>

> Website Profile<http://www.sycr.com/Douglas-S-Brown/> |

> vCard<http://www.sycr.com/attorneys/vcard.aspx?attorney=29>

>

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> <image001.jpg>

> <image002.png>

> <S&P Credit Watch Westlands 3-14-16.pdf>

**To:** Bobbie Ormonde[bormonde@westlandswater.org]  
**Cc:** 'Dan Pope'[dpope@westlandswater.org]; 'david.houston@citi.com'[david.houston@citi.com]; Brown, Douglas S.[DBROWN@SYCR.com]; tbirmingham@westlandswater.org[tbirmingham@westlandswater.org]; Dyson, Paul (Analytical)[paul.dyson@standardandpoors.com]  
**From:** Weil, Chloe (Analytical)  
**Sent:** Fri 3/25/2016 8:03:39 PM  
**Subject:** S&P Revised Outlook  
[Press Release Westlands Outlook Change.pdf](#)

Bobbie—

We appreciate the assistance you provided getting the information we needed to conduct our review.

I am attaching a copy of the press release regarding the outlook change that was released this morning. I will send you a draft of the full report to review for factual accuracy on Monday.

Happy Easter to all who celebrate.

Regards,  
Chloe



**Chloe Weil**  
Director, U.S. Public Finance Infrastructure Group

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## Westlands Water District, CA Ratings Removed From CreditWatch, Affirmed After Our Query Into SEC Enforcement Action

**Primary Credit Analyst:**

Chloe S Weil, San Francisco (1) 415-371-5026; chloe.weil@standardandpoors.com

**Secondary Contact:**

Paul J Dyson, San Francisco (1) 415-371-5079; paul.dyson@standardandpoors.com

SAN FRANCISCO (Standard & Poor's) March 25, 2016--Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs); and
- 'A+' long-term rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, issued for Westlands Water District.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch with negative implications on March 14, 2016, following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Security Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's



extraordinary accounting transactions that were the subject of the proceedings.

"Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as 'vulnerable' and will continue to monitor the district's continuing disclosure practices," said Standard & Poor's credit analyst Chloe Weil. "However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We further believe the district's present financial position remains comparable to that of its peers at the present rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon," Ms. Weil added.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

#### RELATED CRITERIA AND RESEARCH

##### Related Criteria

- USPF Criteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- USPF Criteria: Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- USPF Criteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- Criteria: Use of CreditWatch And Outlooks, Sept. 14, 2009

##### Related Research

- U.S. State And Local Government Credit Conditions Forecast, Jan. 11, 2016
- U.S. Municipal Water And Sewer Utilities 2014 Sector Outlook: Learning To Do More With Less, Jan. 9, 2014

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of RatingsDirect at [www.globalcreditportal.com](http://www.globalcreditportal.com) and at [www.spcapitaliq.com](http://www.spcapitaliq.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box

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**To:** Joe DuCote[jducote@bloomberg.net]; Frank Soriano[fsoriano@suttersf.com]  
**From:** Dan Pope  
**Sent:** Wed 7/13/2016 3:04:13 PM  
**Subject:** Notification of Fitch Rating Decision - Westlands Water District (CA)  
[Final release WWD\(CA\) July 2016.pdf](#)

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>  
>

## **FITCH REMOVES WESTLANDS WATER DISTRICT, CA WATER REVS FROM NEGATIVE WATCH; OUTLOOK TO NEGATIVE**

Fitch Ratings-Austin-12 July 2016: Fitch Ratings has affirmed the ratings on and removed from Ratings Watch Negative the following underlying ratings of the Westlands Water District, California (Westlands or the district):

--\$97.3 million revenue certificates of participation (COPs), series 2005A, 2007A, 2007B and 2008A, at 'AA-';

--\$22.1 million revenue COPs series 2008A (bank bonds) at 'AA-';

--\$74.2 million revenue refunding bonds series 2012A at 'AA-'.

In addition, Fitch has affirmed the ratings on and removed the Rating Watch Negative on the following San Luis & Delta Mendota Water Authority, CA (SLDMWA) bonds:

--\$29.8 million refunding revenue bonds (Delta Habitat Conservation and Conveyance Project), series 2013A, at 'AA-'.

The Rating Outlook is Negative.

### **KEY RATING DRIVERS**

**NEGATIVE WATCH REMOVED:** Fitch has removed the district's ratings from Negative Watch because it believes the actions taken by the Securities and Exchange Commission and the district mitigate the risk of future misrepresentations and omissions by the district relating to district financial results. Further, board adopted fixed-land based charges mitigate the risk of future revenue volatility.

**NEGATIVE OUTLOOK:** The Negative Rating Outlook is due to the potential for significant leveraging and additional drainage management responsibilities that would be assumed by the district following authorization of a drainage settlement (drainage settlement) with the United States. Authorization of the drainage settlement is pending U.S. Congressional approval.

**LARGEST WATER DISTRICT IN THE NATION:** Westlands is the largest water district by acreage in the nation, encompassing 614,700 acres in Fresno and Kings Counties in the San Joaquin Valley serving mostly agricultural irrigation needs. The district serves a highly concentrated agricultural user base that produces crops valued around \$1.5 billion annually.

**LOW ALLOCATIONS LEAD TO HIGHER COSTS:** Although the district has ample water entitlements [1.19 million acre feet (af) to serve regional irrigation need]), allocations of Central Valley Project (CVP) water can vary widely from year to year, driven by hydrology and environmental regulations. Unfavorably for the district, CVP allocations have been 5% or less annually since 2014, forcing the district to purchase more costly supplies elsewhere for its customers.

**SOUND FINANCIAL POSITION:** The district's financial position is generally stable following the adoption of fixed-rate land based charges in fiscal 2011. DSC on senior lien debt has been 1.6x



or higher since 2011. District cash balances have continued to climb, growing to over \$140 million for fiscal 2015, up from just \$40 million in fiscal 2010.

**WESTLANDS GUARANTY ON SLDMWA BONDS:** The rating on SLDMWA bonds reflects Westlands' obligation to pay 100% of debt service to the trustee. Westlands' is entitled to subsequent repayment from the other eight districts, which makes up about 20%, or approximate \$8 million, of the total obligation. SLDMWA obligation is paid as an operating expense by Westlands.

## **RATING SENSITIVITIES**

**ADDITIONAL LEVERAGE WITH DRAINAGE SETTLEMENT:** The rating would likely be downgraded if the U.S. Congress approves the drainage settlement with Westlands Water District due to significant debt likely to be required as part of the settlement, which could ultimately pressure the district's financial performance. If the drainage settlement agreement is not authorized, the Outlook would likely be moved to Stable based on the district's existing credit profile.

**LEVERAGE ON BEHALF OTHERS:** Additional debt taken on by the district on behalf of other agencies, such as the San Luis & Delta Mendota Water Authority, could further pressure district finances and lead to a rating downgrade.

## **CREDIT PROFILE**

### **RATING WATCH NEGATIVE REMOVED**

Following further discussions with the district, Fitch believes that the accounting reclassifications utilized in fiscal 2010 to meet the 1.25x rate covenant were isolated to that reporting period. Additionally, the board's adoption of a formal written policy for disclosure procedures coupled with the staff training related to disclosure procedures and responsibilities required under federal law are indicative of the district board and management's undertaking to provide more transparent financial disclosure going forward. Removal of the Rating Watch Negative is further supported by Fitch's belief that the adoption of fixed-rate land based charges starting in fiscal year 2011 help to mitigate the risk of future revenue volatility resulting from reduced CVP water allocations.

### **DRAINAGE SETTLEMENT COULD PRESSURE DISTRICT**

In September of 2015 the district entered into a settlement with the U.S. to resolve decades of litigation surrounding drainage issues within the district brought on by the district and various district landowners. The settlement, which has been signed by the U.S. and the district, still requires Congressional authorization. Fitch views favorably the district's receipt of a permanent water contract (albeit with a reduced delivery entitlement) and relief from \$295 million (present value) in obligations to the U.S. However, Fitch is concerned with the additional responsibilities taken on by the district for drainage management and the related costs and liability that could be incurred.

Low end estimates of costs associated with the drainage settlement are approximately \$400 million, which is double the current debt outstanding of the district and its obligation to repay bonds on behalf of the SLDMWA. High end estimates are closer to \$800 million, or four times the district's current outstanding obligations. The district is also required to permanently retire 100,000 acres of land (reducing the irrigable acreage by 17%) and compensate farmers in drainage affected parts of the district. The district currently owns about 90,000 acres of land and would look purchase or obtain non-irrigation covenants on the additional 10,000 acres. The district has about \$50 million set aside in a land and water reserve fund which could be used to offset the costs

related to the immediate implementation of some of the drainage settlement requirements, but would likely have to debt finance additional costs associated with completing the requirements.

## LARGE, UNIQUE IRRIGATION DISTRICT

Westlands is governed by a nine-member board of directors elected from district land owners and is responsible for district governance and policies. The district maintains full independent rate-setting authority as well as the ability to place a lien on property if water bills are unpaid. The district covers 614,700 acres in Fresno and Kings County on the west side of the San Joaquin Valley of which about 568,000 is irrigable. It is the largest irrigation district in the U.S. by acreage and responsible for administering the delivery of water from the United States Bureau of Reclamation (USBR) CVP.

## CONCENTRATION OF AGRICULTURAL CUSTOMERS

The district serves a small concentrated customer base comprised of approximately 700 connections for agricultural irrigation service and another 200 municipal and industrial connections. Irrigation water sales accounted for 80% of the district's operating revenues, land based charges 17% and municipal and industrial revenues accounted for just over 2% of operating revenues in fiscal 2015. Offsetting the ratepayer concentration risk somewhat is the high value of the cash crops farmed in the district (about \$2 billion in calendar 2015).

## 2015 FINANCIAL RESULTS BOOSTED BY LAND SALES

Financial results for fiscal 2015 were strong, boosted by \$22 million in additional non-operating revenues from the sale of land. Senior lien and all-in DSC, including land sale proceeds were 3.6x and 2.6x, respectively. Without the land sale proceeds, DSC would have still been healthy at 2.1x and 1.7x, respectively. The district budgets to achieve 1.25x DSC on senior lien debt and its rates are designed to cover the cost of water plus some operational expenses of the district. Management provided forecasts project senior lien DSC of 2.3x in fiscal 2016 supported by an additional \$6 million in land sales, before dropping to 1.4x for fiscals 2017 - 2020. Forecasts assume rates based on 0% CVP water allocations.

District cash continued an upward trend. Cash balances registered \$140 million in fiscal year 2015, up sharply from \$40 million in fiscal year 2010. Cash balances would likely decline somewhat when the drainage settlement is authorized as the district indicated utilizing some reserves to complete drainage settlement requirements.

## LOW CVP ALLOCATIONS RESULT IN HIGHER COST

District water is purchased from the USBR's CVP project and sold to users at prices designed to cover cost. CVP allocations have been minimal the last several years, with with 0% CVP allocation in 2014 and 2015 and just 5% in 2016. When allocations are low the district is forced to purchase supplemental water on the open market which can be costly.

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#### Applicable Criteria

Revenue-Supported Rating Criteria (pub. 16 Jun 2014)

[https://www.fitchratings.com/creditdesk/reports/report\\_frame.cfm?rpt\\_id=750012](https://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=750012)

U.S. Water and Sewer Revenue Bond Rating Criteria (pub. 03 Sep 2015)

[https://www.fitchratings.com/creditdesk/reports/report\\_frame.cfm?rpt\\_id=869223](https://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=869223)

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**To:** 'Karen Vierra'[kvierra@westlandswater.org]  
**From:** Bobbie Ormonde  
**Sent:** Tue 3/29/2016 12:02:37 AM  
**Subject:** WWD S&P Fianl Report  
[Westlands Water District SP Report 2016 Review.pdf](#)

Karen,

Please post to EMMA tomorrow. Thank you.

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Director of Finance and Administration  
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(559) 241-6203

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## Summary:

Westlands Water District, California  
San Luis & Delta-Mendota Water  
Authority; Joint Criteria; Water/Sewer

### Primary Credit Analyst:

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Related Criteria And Research



## Summary:

# Westlands Water District, California San Luis & Delta-Mendota Water Authority; Joint Criteria; Water/Sewer

Credit Profile		
<b>Westlands Wtr Dist wtr &amp; swr</b>		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
<b>San Luis &amp; Delta-Mendota Wtr Auth, California</b>		
Westlands Wtr Dist, California		
San Luis & Delta-Mendota Wtr Auth (Westlands Wtr Dist) (BAM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

## Rationale

Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs); and
- 'A+' rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, of which Westlands Water District is the guarantor.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Securities and Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1.0x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's extraordinary accounting transaction that were the subject of the proceedings. Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as "vulnerable" and will continue to monitor the district's continuing disclosure practices. However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We believe the district's current financial position remains comparable to that of its peers at the current

rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon.

The ratings further reflect our assessment of the district's:

- Strong market position as the sole provider of irrigation water in a diverse agricultural area;
- Revised rate structure that enhances revenue stability despite significant increases in supplemental water supply costs and fluctuations in water deliveries from the U.S. Bureau of Reclamation's Central Valley Project (CVP);
- Significant progress on the decades-long dispute with the Bureau of Reclamation regarding drainage-impaired soils in the service territory, although the legal settlement remains subject to congressional approval; and
- Future challenges associated with the procurement of additional raw water sources over the long-term horizon.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The valley has been farmed with irrigation water in varying degrees for approximately half a century, and could not exist on its current scale without major water infrastructure programs such as the CVP. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable, and produces high-value permanent crops, such as almonds and pistachios, as well as tomatoes, grapes, and cantaloupes. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

Water sales and purchased water costs are the district's primary revenue sources and expenses. The main water source comes from a 1.195 million acre-foot contract entitlement with the U.S. Bureau of Reclamation's CVP. The district serves as the leading provider of imported water to the region. Supply mix can vary significantly from year to year based on CVP allocations, which are driven by hydrology. The annual safe yield of the confined underground aquifer adds another 200,000 acre-feet and local farmers generally extract as much groundwater as possible, but CVP allocations and groundwater supplies have long been inadequate to meet the region's water demand, which is approximately 1.2 million acre-feet. Accordingly, the district is continually engaged in efforts to supplement its water supply from outside sources. In recent years, the district has provided between one-half and two-thirds of all water consumed in the service area through higher-cost supplemental purchases.

As the district's financial performance is hydrology-dependent, the district performs robust financial forecasting and is proactive in maintaining relationships with other water districts and key stakeholders to ensure adequate water transfers, and to that end has been adept at securing regulatory approvals to receive supplemental water.

Weather-normalized, formal historic trend analysis is performed and updated annually for both revenue and expenses; and we believe regular efforts are made to determine whether one or more factors will cause revenues or expenses to deviate from their long-term trends over the next few years. In addition, beginning in fiscal year 2011, to help alleviate the burden on water users for the increased cost of water in short water supply years, the district's board elected to collect half of the operations & maintenance charges through a land-based charge to landowners rather than through the water rate.

On Sept. 15, 2015, the U.S. Department of Justice and Westlands approved a settlement ending a decades-long dispute over the Bureau of Reclamation's responsibility to provide drainage for the farmland within Westlands. The drainage

settlement requires Westlands to assume full responsibility for drainage management within its boundaries, and will cap CVP deliveries at 75% of the district's contract entitlement. Furthermore, Westlands will be required to retire a minimum of 100,000 acres of land and to repurpose the non-irrigated lands for environmentally friendly uses. We view the settlement as manageable as the district has already acquired 90,000 acres of land for this purpose. The district also has over \$40 million in designated reserves that could be used to meet the remaining requirements under the settlement.

The district's financial performance has been sound in our view over the past five years, despite the impact of the ongoing drought on the district's water supply. Senior lien debt service coverage (DSC) improved to 2.1x in fiscal 2015 from 1.8x in fiscal 2014, while all-in DSC, which adjusts for the district's fixed charges included in operating expenses, the district's subordinated lien obligations, and the impact of one-time land sales on revenues, improved to 1.6x from 1.2x, which we consider good. Based on unaudited results, we expect all-in DSC in fiscal 2016 to remain strong, at about 1.7x, excluding one-time land sales. Based on management's forecast, we expect all-in DSC to decline to about 1.0x in fiscal 2017, which we consider adequate at the current rating level. With a debt-to-capitalization ratio of about 55% as of February 28, 2015, we consider the district to be moderately leveraged.

The district's liquidity position is strong, in our view. The district's cash and cash equivalents as of Feb. 29, 2016 (unaudited) was \$102 million, which represented 314 days' of operating expenses. We understand that the district maintains a strong liquidity position, in part to enable it to opportunistically acquire water rights or otherwise firm up its water supply.

The proposed California WaterFix (the revised approach to the Bay Delta Conservation Plan), a comprehensive plan for the Bay-Delta to address environmental and water supply issues, if adopted and implemented, would entail substantial infrastructure investment in the Delta and implementation of other conservation measures. The capital costs associated with this project will likely be large--most recently estimated at \$14.6 billion, and the district estimates that its proportionate share would be about \$2.4 billion. However, we recognize that the method for financing the project has not been established, and the district has no obligation to fund these future costs. However, we believe that substantial increases in the district's land-based charges and CVP water rates will be necessary to cover the district's (yet to be determined) share of the planned Bay Delta improvements. Even so, we believe that the CVP water may remain the district's lowest cost source of water, and is critical to support the region's agricultural output.

## Outlook

The stable outlook reflects our view of the district's competitive position as the leading provider of supplemental water to a region with strong water demand and scarce water resources. During the two-year outlook period, we anticipate that the district will continue to sustain its good coverage metrics and extremely strong liquidity position while managing its water supply. We also expect the district to finalize its plans regarding the drainage settlement and that the district currently has ample capital funding capacity to execute the requirements under the agreement.

### Upside scenario

Although not anticipated, due to the district's service territory characteristics and potential shifts in the water supply portfolio, we may raise the ratings if the district is able to stabilize and sustain strong coverage metrics and if the local

service economy strengthens and diversifies such that its characteristics are comparable to those of peers at a higher rating level.

#### Downside scenario

We may lower the ratings if changes to the water supply portfolio or unexpected capital needs cause the district's financial metrics to materially erode.

## Related Criteria And Research

#### Related Criteria

- USPFCriteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- USPFCriteria: Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- USPFCriteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- Criteria: Use of Credit Watch And Outlooks, Sept. 14, 2009

#### Related Research

- U.S. State And Local Government Credit Conditions Forecast, Jan. 11, 2016
- U.S. Municipal Water And Sewer Utilities 2014 Sector Outlook: Learning To Do More With Less, Jan. 9, 2014

Ratings Detail (As Of March 28, 2016)		
Westlands Wtr Dist wtr & swr (AGM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from Credit Watch
Westlands Wtr Dist (Westlands Wtr Dist) JOINT CRIT		
<i>Long Term Rating</i>	AAA/A-1	Current
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from Credit Watch
Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from Credit Watch

Many issues are enhanced by bond insurance.

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of Ratings Direct at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

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**To:** Env-trinity[env-trinity@velocipede.dcn.davis.ca.us]  
**From:** env-trinity  
**Sent:** Mon 4/11/2016 5:13:48 PM  
**Subject:** [env-trinity] Breaking News: Feds to Probe Delta Tunnels Misuse of Grant Funds!  
[Untitled attachment 01133.txt](#)

<http://www.dailykos.com/stories/2016/4/11/1513800/-Feds-to-Probe-Delta-Tunnels-Misuse-of-Grant-Funds>

<http://fishsniffer.com/index.php/2016/04/11/1614/>

# Feds to Probe Delta Tunnels Misuse of Grant Funds



In the latest development in the long saga of Governor Jerry Brown's rapidly collapsing California Water Fix, the Inspector General will be conducting an investigation of a Public Employees for Environmental Responsibility (PEER) complaint detailing how a funding agreement with the California Water Resources Department "is illegally siphoning off funds that are supposed to benefit fish and wildlife to a project that will principally benefit irrigators."

Below is the press release that I just received from PEER:

[www.peer.org/...](http://www.peer.org/...)

For Immediate Release: Apr 11, 2016 Contact: Kirsten Stade (202) 265-7337

## FEDS TO PROBE DELTA TUNNEL MISUSE OF GRANT FUNDS

Inspector General to Audit California Water Resources Handling of Federal Aid

Posted on Apr 11, 2016 | Tags: [California](#), [DOI](#)

Washington, DC — How the State of California spent millions of dollars of federal aid meant for improving fish habitat on preparing the Environmental Impact Statement for its controversial Delta Tunnel Project is under new legal scrutiny, according to documents posted today by Public Employees for Environmental Responsibility (PEER). Representing a U.S. Bureau of Reclamation employee, PEER filed a complaint



detailing how a funding agreement with the California Water Resources Department is illegally siphoning off funds that are supposed to benefit fish and wildlife to a project that will principally benefit irrigators. The Delta Tunnel is a massive engineering project to trans-ship vast quantities of freshwater from the reaches of the Sacramento River, its sloughs and Delta to the south. In support of this project, the state has received more than \$60 million in grants authorized under the federal Fish and Wildlife Coordination Act. The PEER complaint filed on February 19, 2016 charges that –

- Those funds are earmarked for fish habitat improvements but are instead being expended on work that will harm critical habitat for at least five endangered and threatened fish species. Out of millions spent not a dime went to habitat improvements;
- The state double-billed for work it supposedly already did with an earlier \$50 million grant; and
- The state collected all of the federal funds when the agreement was executed, in violation of a 50/50 matching requirement. The Bureau of Reclamation also ignored its own rule barring all the federal money from being expended before receiving the non-federal share. Nor has Water Resources indicated when and from what source it will supply its overdue match.

In a letter dated April 8, 2016, Mary Kendall, Deputy Inspector General for the U.S. Department of Interior wrote PEER saying:

“We have carefully reviewed the information you provided to us and gathered additional information about the agreement. Based on this information we have decided to conduct a review into the issues raised in your letter and we expect to commence our work on this matter this month.”

“California is improperly diverting federal grants to a giant slush fund for the California Water Fix,” stated PEER Senior Counsel Paula Dinerstein, who drafted the complaint, using a nickname applied to the Delta Tunnel. “In this case, the Bureau of Reclamation is abetting the State of California in breaking laws designed to ensure that federal investments to benefit wildlife are not used to their detriment.” Currently, the Interior Inspector General is already auditing misuse of Reclamation grants also intended to benefit fish but actually benefitting irrigators, stemming from another PEER whistleblower complaint made in 2015. Deputy Inspector General Kendall indicates that she does not expect that earlier audit to be delayed, as it is slated to be submitted to Interior Secretary Sally Jewell for her approval.

[Read the PEER letter](#)

[See the Inspector General response](#)

[Look at ongoing IG probe of diversion of Klamath drought relief moneys](#)

---

env-trinity mailing list  
env-trinity@velocipede.dcn.davis.ca.us  
<http://www2.dcn.org/mailman/listinfo/env-trinity>

**To:** Weil, Chloe[chloe.weil@spglobal.com]; 'bormonde@westlandswater.org'[bormonde@westlandswater.org]  
**Cc:** 'rporr@fieldman.com'[rporr@fieldman.com]; 'tbirmingham@westlandswater.org'[tbirmingham@westlandswater.org]  
**From:** Moore-Young, Cheryl  
**Sent:** Tue 10/18/2016 3:34:23 PM  
**Subject:** RE: S&P Rating Letter & Report - Westlands Water District  
[Westlands Wtr Dist RL 20161014 Rating letter 814796.pdf](#)

My apologies for the typo. Please find the corrected letter attached.

Kind regards,  
Cheryl

Cheryl Moore  
Ratings Support Services

**S&P Global**  
US Public Finance | 500 N. Akard, Suite 3200 | Dallas, TX 75201  
214.765.5866 T | 214.871.1409 F  
[cheryl.moore-young@spglobal.com](mailto:cheryl.moore-young@spglobal.com)  
[www.spglobal.com](http://www.spglobal.com)

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---

**From:** Weil, Chloe (Analytical)  
**Sent:** Tuesday, October 18, 2016 10:12 AM  
**To:** S&P\_USPF\_Rating Letters; 'bormonde@westlandswater.org'  
**Cc:** Moore-Young, Cheryl (Associated); 'rporr@fieldman.com'; 'tbirmingham@westlandswater.org'  
**Subject:** RE: S&P Rating Letter & Report - Westlands Water District

All--

Let me get our support staff to resend the rating letter to correct the typo. Sorry about that!

Chloe

Sent with Good ([www.good.com](http://www.good.com))

-----Original Message-----

**From:** S&P\_USPF\_Rating Letters  
**Sent:** Tuesday, October 18, 2016 09:31 AM Eastern Standard Time  
**To:** 'bormonde@westlandswater.org'  
**Cc:** Moore-Young, Cheryl (Associated); Weil, Chloe (Analytical); 'rporr@fieldman.com';  
'tbirmingham@westlandswater.org'  
**Subject:** S&P Rating Letter & Report - Westlands Water District

Dear Mr. Ormonde,

Please find attached the rating letter and report for the transaction reflected above.

Should you have any questions regarding the rating or contents of the report, please contact the primary analyst listed in the report. If you need any further assistance, please don't hesitate to contact Cheryl Moore-Young at [cheryl.moore-young@spglobal.com](mailto:cheryl.moore-young@spglobal.com) or +214-765-5866.

For fee inquiries or for questions regarding invoicing and pricing, please contact Fee Services at (877)-299-2569 or email them directly [here](#).

Thank you for choosing S&P Global.

Regards,



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October 14, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Ms. Bobbie Ormonde, Director of Finance and Administration

Re: *US\$50,520,000 Westlands Water District, California, Refunding Revenue Bonds, Series 2016A, dated: Date of delivery, due: September 01, 2036*

Dear Ms. Ormonde:

Pursuant to your request for an S&P Global Ratings rating on the above-referenced obligations, S&P Global Ratings has assigned a rating of "A+". S&P Global Ratings views the outlook for this rating as stable. A copy of the rationale supporting the rating is enclosed.

This letter constitutes S&P Global Ratings' permission for you to disseminate the above-assigned ratings to interested parties in accordance with applicable laws and regulations. However, permission for such dissemination (other than to professional advisors bound by appropriate confidentiality arrangements) will become effective only after we have released the rating on [standardandpoors.com](http://standardandpoors.com). Any dissemination on any Website by you or your agents shall include the full analysis for the rating, including any updates, where applicable.

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Please send hard copies to:  
S&P Global Ratings  
Public Finance Department  
55 Water Street

New York, NY 10041-0003

The rating is subject to the Terms and Conditions, if any, attached to the Engagement Letter applicable to the rating. In the absence of such Engagement Letter and Terms and Conditions, the rating is subject to the attached Terms and Conditions. The applicable Terms and Conditions are incorporated herein by reference.

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Sincerely yours,

S&P Global Ratings

a division of Standard & Poor's Financial Services LLC

mc

enclosures

cc: Mr. Robert A. Porr  
Mr. Thomas W. Birmingham





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**To:** 'Karen Vierra'[kvierra@westlandswater.org]  
**From:** Bobbie Ormonde  
**Sent:** Fri 3/11/2016 4:39:38 PM  
**Subject:** FW: S&P Review of Westlands Water District  
[Series 2013 San Luis Westlands Water District - S&P Rating Report.pdf](#)  
[Standard and Poors Revised Water Sewer Criteria Jan 19 2016.pdf](#)  
[S&P Pre-Mtg Memo Westlands Water District.pdf](#)

Karen,

Please review and we need to start gathering the data.

---

**From:** Weil, Chloe [mailto:chloe.weil@standardandpoors.com]  
**Sent:** Thursday, March 10, 2016 6:23 PM  
**To:** Brown, Douglas S.; Bobbie Ormonde  
**Cc:** Dyson, Paul  
**Subject:** S&P Review of Westlands Water District  
**Importance:** High

Good evening Bobbie –

As I previously indicated, we will be working on a full review of the rating on the District's revenue bonds as a result of yesterday's SEC enforcement action. We last conducted a full review of the District in relation to the May 2013 issuance by the San Luis & Delta–Mendota Water Authority of the series 2013A bonds.

I am attaching our rating report from 2013 as a point of reference, and I am sending an attached list of key questions for your consideration to help expedite our credit review. As you can see, the bulk of our questions relate to the accounting treatment of the adjustments made in 2010 and 2012, and making sure we understand each of the revenue items in the fiscal 2015 audit – but we are also focused on the District's financial projections over the next five years.

We are hoping to schedule a meeting with the District (either in person or by phone) on March 18<sup>th</sup> or 21<sup>st</sup> to give us enough time to finalize the rating by March 25<sup>th</sup>. We will wait to hear from you for which date works best for the District.

Finally, I am also including a copy of our new water/sewer criteria that we released in January.

Regards,

Chloe



**Chloe Weil**  
Director, U.S. Public Finance Infrastructure Group

Standard & Poor's Ratings Services  
One California Street, 31<sup>st</sup> Floor, San Francisco, CA 94111  
T 415.371.5026 | F 415.371.5090  
[chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)  
[www.standardandpoors.com](http://www.standardandpoors.com)

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---

**From:** Brown, Douglas S. [mailto:DBROWN@SYCR.com]  
**Sent:** Thursday, March 10, 2016 1:01 PM

**To:** Weil, Chloe (Analytical)  
**Cc:** Bobbie Ormonde  
**Subject:** WWD

Chloe,

Per our conversation:

Bobbie Ormonde  
District Director of Finance & Administration  
[bormonde@westlandswater.org](mailto:bormonde@westlandswater.org)  
(559) 241-6203

**Douglas S. Brown**  
**Stradling**  
Attorneys at Law

Stradling Yocca Carlson & Rauth, P.C.  
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## Memorandum

### Discussion Points – Surveillance Review of Westlands Water District

#### **Analyst Contacts:**

Chloe Weil – (415) 371-5026

Paul Dyson – (415) 371-5079

#### **Information Requests**

- Documentation of the accounting transactions in fiscals 2010 and 2012 referenced in the SEC enforcement action dated March 9, 2016.
- The memos provided to Westlands' auditor in November 2009 describing the proposal to "reclassify cash reserves or retained earnings" to record additional revenue "in lieu of collecting current revenue while maintaining the required debt coverage ratio" as well as any memos to the auditor regarding the 2012 adjustment.
- Draft fiscal 2016 audit and fiscal 2017 operating budget, if available.
- Latest full debt service schedule (including the districts' subordinate lien debt service and loans and any off-balance sheet debt) from fiscal 2015 onwards including LOC fees.
- Latest swap mark-to-market.
- Latest rate study, 5-year financial projections and 5-year CIP.
- Latest month-end unrestricted cash and investment balance.

#### **Financials**

- We understand that the District's total operating revenues increased by 4% on a year-over-year basis between fiscals 2014 and 2015 despite a reduction in water sales. Can you please walk us through the District's rate structure and the offsetting revenues so we can better understand why operating revenues did not decline in tandem with water sales?
- Can you please provide a historical summary of the accounting treatment for the District's water sales revenues – please provide a cross-walk of the District's water rates and charges to the "Irrigation Water Sales" line item in the income statement - including revenues collected through (1) base rates and (2) land-based charges over the past 5 years.
- Why are the "cash receipts from water sales and related activities" in the cash flow statement so much higher (\$162.6 million) than the total operating revenues (\$124.3 million) in fiscal 2015?
- The fiscal 2015 audit lists \$13.1 million in non-operating revenue for "COP Repayment" - what is this for?
- We understand that the District's non-operating revenue increased 175% on a year-over-year basis, including a \$20.1 million gain on the sale of land. What was the land sale for?
- Are the District's cash receipts for land sales restricted or may they be used to fund operations?

- The fiscal 2015 audit indicates that the District's management believes that there is a potential uncollectible account for the year ended February 28, 2015. Accordingly, an allowance for doubtful accounts has been recorded in these financial statements. Can you elaborate on what this is for?
- We understand that in fiscal 2010 the District reclassified certain assets by credited customers' accounts and treated these assets as revenues. Is this the only year that this action occurred, or did this practice continue through fiscal 2015? Was this reclassification for pre-paid water costs, or other assets?
- To help us understand the reclassification of assets, please provide the balances for the District's pre-paid water costs at fiscal year-end for fiscals 2010 – 2015.
- We also understand that the District capitalized some of the cost of the preliminary costs associated with BDCP/Water Fix while in other years these expenses have been expensed. Can you please provide a summary of spending to date on Delta-related planning, and the dollar amount of costs capitalized or expensed over the past five years?
- Note D of the audit mentions that "Interest in water project represents the District's participation in the San Luis Delta-Mendota Authority's (SLDMWA) funding of the Department of Water Resources (DWR) water project that will increase the reliability of the District's water supply. If the project moves forward, DWR intends to issue bonds for financing. The project would provide a future benefit to the District." Is this related to the BDCP/Water Fix or other projects?
- Note F states "The District holds a promissory note secured by real property on a loan made to a management level employee. The notes' terms provides for principal and interest payments to be made on a semi-monthly basis and is due in full on or before August 31, 2021. At February 28, 2015, the balance due is \$1,456,687." What is this for?
- Note R indicates that \$342,826,021 in unpaid CVP capital was reflected on Reclamation's accounting records as the District's future capital obligations as of September 30, 2013, and this amount has not been accrued as an obligation on the District's financial statements. Is this obligation funded through the water rates or through a separate charge?
- Is there any off balance sheet debt? Direct purchase debt?

### **Legal/Environmental/Regulatory**

- Please provide a summary regarding the settlement of the drainage lawsuit.
- Please provide a status update on the interim renewal water service contract with the Bureau of Reclamation.
- Please provide an update on land subsidence within the service area. What measures are being taken within the region to address this concern?
- Is the District aware of any pending regulatory or environmental actions against it?

### **Operations**

- Does the District have a best case/worst case forecast for water supply and demand for the next couple years? Beyond 2017?
- What future rate increases are projected?
- What long-term water supply acquisitions are currently envisioned? How will these projects be funded?
- Does the District have a formal asset management program?
- What is the approximate percentage of non-revenue water from the system?



- Has the District performed any vulnerability assessments of its infrastructure (i.e., potential system impacts from climate change, natural disasters, man-made disasters, etc.)?
- Have there been any service interruptions during the past year?
- Have there been any fines or penalties during the past year?

### **Capital Improvement Program**

- How often is the CIP reviewed and updated?
- Does the District plan to issue any additional debt within the next 5 years?
- How is the District forecasting its share of Water Fix costs? What assumptions does the District utilize to forecast the impact of Water Fix on the customer base?

### **Planning and Policies**

- How often does the District review and update its long-term financial projections?
- Does the District have a formal succession plan for key staff?
- Does the District track intra-year budget vs. actuals and disclose it? If so, how often are they disclosed?

### **Miscellaneous**

- Is the District aware of any pending or threatened litigation against it?
- Is there any other information that the District believes Standard & Poor's should be aware of that has not already been discussed as part of this review?

# RatingsDirect®

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## Summary:

San Luis & Delta-Mendota Water  
Authority, California  
Westlands Water District; Joint  
Criteria; Water/Sewer

### Primary Credit Analyst:

Tim Tung, San Francisco (1) 415-371-5041 [tim.tung@standardandpoors.com](mailto:tim.tung@standardandpoors.com)

### Secondary Contact:

Paul J Dyson, San Francisco 415-371-5079 [paul.dyson@standardandpoors.com](mailto:paul.dyson@standardandpoors.com)

## Table Of Contents

Rationale

Outlook

Related Criteria And Research

## Summary:

# San Luis & Delta-Mendota Water Authority, California

## Westlands Water District; Joint Criteria; Water/Sewer

Credit Profile		
US\$40.87mil rfdg rev bnds (WestlandsWtr Dist) ser 2013A due 03/01/2043		
LongTermRating	A+/Stable	New
Westlands Wtr Dist wtr & swr		
UnenhancedRating	A+(SPUR)/Stable	Affirmed

## Rationale

Standard & Poor's Ratings Services assigned its 'A+' long-term rating to San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds (DHCCP Development Project). At the same time, we affirmed our 'A+' long-term rating on the authority's series 2009A revenue notes and our 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s revenue bonds and certificates of participation (COPs). The outlook on all ratings is stable.

We also affirmed our 'AAA/A-1+' rating on the district's series 2008A adjustable-rate refunding revenue COPs. The long-term component of the rating reflects the combination of the district's creditworthiness and credit enhancement in the form of a letter of credit (LOC) provided by Rabobank N.A. (not rated) and a confirming LOC provided by Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (Rabobank Nederland), New York Branch (AA-/Stable/A-1+). This rating is based on Standard & Poor's joint criteria assuming a low credit correlation between the obligor and the LOC providers. Furthermore, the short-term component of the rating is based on the liquidity support provided by the LOCs.

The ratings reflect our view of the district's:

- Large and agriculturally diverse service area;
- Rate structure that collects half of the district's operations and maintenance (O&M) expenses through water rates and half through land-based charges, which enhances revenue stability;
- Debt service coverage (DSC) that is projected to range from adequate to good during the next four fiscal years; and
- Strong cash reserves.

In our view, these strengths are partially offset by the district's:

- Dependence on volatile water allocations from the U.S. Bureau of Reclamation's (USBR) Central Valley Project (CVP),

- Anticipated need for significant additional leverage to finance its share of upcoming projects related to the Delta Habitat Conservation and Conveyance Project (DHCCP),
- Small agricultural customer base of 700 customers over which to spread fixed costs, and
- Adequate total DSC when taking into consideration the district's subordinate 1965 contract payments to USBR.

We understand that the 2013A bonds are being issued to refund a portion of the authority's 2009A revenue notes.

We view the bond provisions as adequate. The bonds are secured by authority revenues, which consist of payments under activity agreements by the member agencies participating in the financing. However, we understand that Westlands Water District is obligated under its activity agreement to pay 100% of principal and interest when due, and that the district is reimbursed from authority revenues as participating member agencies make payments to the authority. Therefore, our analysis focuses solely on the district although the district's allocable share of the 2013A bonds' debt service is about 82%. The district's activity agreement payments are treated as a district operating expense, and the payments are senior in priority to the district's obligations with respect to its bonds and COPs. We understand that a debt service reserve is expected to be funded from bond proceeds and provide additional liquidity for the 2013A bonds.

The district was formed in 1952 under the California Water District Law to furnish irrigation water and drainage service to farmers within the district's boundaries. Located on the west side of the San Joaquin Valley, the district's service area spans 614,700 acres of level agricultural land in Fresno and Kings counties, 568,500 acres of which are irrigable. The overall customer base is small, at about 700 water users, and consists of larger farms that average 800 to 900 acres in size. These farms produce 60 different crops including cotton, tomatoes, pistachios, cantaloupes, lettuce, almonds, and onions. Permanent crops accounted for about 18% of total irrigable acreage and 30% of crop value in calendar year 2011, the most recent year for which data are available. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district. We consider the customer base to be very diverse based on the leading 10 customers paying about 10.4% of total operating revenues, and no customer paying more than about 3.5% of total operating revenues. The district operates and maintains a very water-efficient underground piped distribution system through which all deliveries to water users are measured by reading flow meters twice a month.

The district's primary water source is surface water supplied through the USBR's CVP. The initial 1963 contract between the district and USBR specified a 900,000 acre-feet contract water entitlement that was subsequently increased to 1.15 million acre-feet. The agreement expired at the end of 2007, and the district and USBR entered into an Interim Renewal Contract (IRC) that has been twice extended to the current termination date on Feb. 28, 2014. Before entering into a new long-term agreement, USBR is required to complete certain environmental reviews, and district management does not believe that these environmental reviews will likely be completed prior to the current IRC expiration date. Management has requested a renewal of the IRC and anticipates that it will be renewed again under substantially the same terms and conditions prior to the current expiration date. The district's total water demand exceeds its CVP contract water entitlement, and additional water supply is provided through supplemental water purchases and groundwater pumping. Due to significant variations in California hydrology, CVP allocations have varied widely, ranging from 10% to 100% of contract entitlement, and the allocation for fiscal year 2014 is currently 20%.

Operating revenues are generated through water sales and acreage charges. We understand that the district's water rates are set annually to pass through all water purchase costs and also recover half of the district's O&M costs. The balance of O&M costs are recovered through acreage charges. We view this structure as prudent given the significant variation in water sales and the volatility of CVP water allocations. Payment for water and power is due monthly by the 25th day following the month end of use, and no further water deliveries are made if payments are not received when due. If monthly payments are not made, amounts due may be added to the annual acreage charges. Water rates may be changed midyear if the water supply situation changes after the start of the fiscal year, which runs from March to February. Rate changes are subject to Proposition 218, but management reports that the district has historically faced minimal resistance to rate changes from land owners -- the most significant protest was a mere 2% of the eligible votes by acreage.

We understand that there are significant potential capital expenses related to the Bay Delta Conservation Plan and the DHCCP although there are no significant capital needs within the district at this time. A record of decision is anticipated in early 2014, after which Phase I of the DHCCP may proceed with design and engineering work that is estimated to cost about \$1.8 billion. Construction of the project (Phase II) is scheduled to commence in 2017 and continue over a 10-year period at an estimated cost of \$13.0 billion. Management currently anticipates participating in Phase I of the DHCCP, although a decision has not yet been made and management continues to monitor project planning and development. If the district decides to participate in Phase I, we understand that financing arrangements may be considered as early as 2014. We understand that the cost of the project will be shared between the state participants and the federal participants, and that the district's share of the federal portion is estimated to be about 25%.

The district's financial performance has been predominantly strong since 1993, in our view, but financial performance is subject to thinner margins during drought years. For example, in fiscal year 2010 the CVP allocation was just 10% of water contract entitlements, and coverage of the district's activity agreement payments and senior debt obligations was good, in our view, at 1.25x. At the same time, the district's total DSC, which includes subordinate contract capital repayments to USBR, narrowed to just 1.0x, which we consider marginally adequate. The district's financial performance improved the following year driven primarily by increased water availability due to wet weather. In fiscal years 2011 and 2012, coverage of activity agreement payments and senior debt obligations was 1.69x and 1.59x, respectively, while total DSC was 1.38x and 1.31x, respectively. Based on unaudited fiscal year 2013 results, we calculate coverage of activity agreement payments and senior debt obligations of 1.32x and total DSC of 1.08x. Weaker performance for the year was driven primarily by lower water sales. During the next four fiscal years, based on management's projections that assume a 40% allocation of the district's contract water entitlement, we calculate coverage of activity agreement payments ranging from 5.44x to 9.06x, while coverage of both activity agreement payments and senior debt obligations ranges from 1.22x, which we consider adequate, to 1.40x, which we consider good. During the same period, we calculate total DSC ranging from 1.02x to 1.15x, both of which we consider adequate.

The district is also a party to a LIBOR-based interest rate swap agreement with a notional amount of \$25.5 million and a mark-to-market value of negative \$3.6 million as of Feb. 28, 2013. The swap agreement was initially entered into in conjunction with the issuance of the 2005 BCOPs with the intent to synthetically fix the interest rate on those

certificates. The 2005B COPs were subsequently refunded with the 2008A COPs, and the interest rate swap is now associated with the 2008A COPs.

The district's liquidity position is strong, in our view. The district's cash and cash equivalents at the end of fiscal year 2012 was \$69.9 million, which represented 222 days of operating expenses; however, we understand that a portion of this balance is restricted and that the unrestricted portion was \$45.6 million, or 145 days, which we also consider strong. Based on unaudited results, management reports cash and cash equivalents at the end of fiscal year 2013 increased to about \$90.9 million, and management attributes the change in cash position primarily to increased prepayments by water users (\$7 million) and deferred revenue for supplemental water (\$7 million). We understand that the district maintains a strong liquidity position in part to enable it to opportunistically acquire water rights or otherwise firm up its water supply.

## Outlook

The stable outlook reflects our view of the district's role as the sole provider of supplemental water to a very large agricultural area that lacks adequate local water supply to meet demand. During the two-year outlook period, we anticipate that a record of decision will be entered regarding the DHCCP, and that financing arrangements related to Phase II of the DHCCP will be finalized. We could lower the rating if increased leverage is not balanced by rate increases that are adequate to maintain existing margins and financial performance, or if liquidity is significantly drawn down as a financing source. We could raise the rating if the district operates with significantly wider margins on a sustained basis or is able to materially enhance water supply stability.

## Related Criteria And Research

- USPFCriteria: Key Water And Sewer Utility Credit Ratio Ranges, Sept. 15, 2008
- USPFCriteria: Standard & Poor's Revises Criteria For Rating Water, Sewer, And Drainage Utility Revenue Bonds, Sept. 15, 2008
- U.S. State And Local Government Credit Conditions Forecast, April 4, 2013

Ratings Detail (As Of May 17, 2013)		
Westlands Wtr Dist adj rate rfdg rev COPs ser 2008A		
Long Term Rating	AAA/A-1+	Affirmed, Removed from Credit Watch
Unenhanced Rating	A+(SPUR)/Stable	Affirmed
Westlands Wtr Dist wtr & swr (AGM)		
Unenhanced Rating	A+(SPUR)/Stable	Affirmed
Westlands Wtr Dist Wtr & Swr rev certs of part		
Unenhanced Rating	A+(SPUR)/Stable	Affirmed
San Luis & Delta-Mendota Wtr Auth, California		
Westlands Wtr Dist, California		
San Luis & Delta-Mendota Wtr Auth (Westlands Wtr Dist) rev nts (Dhccp Dev Proj) ser 2009A		
Long Term Rating	A+/Stable	Affirmed

**Ratings Detail (As Of May 17, 2013) (cont.)**

Many issues are enhanced by bond insurance.

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## Criteria | Governments | U.S. Public Finance: U.S. Public Finance Waterworks, Sanitary Sewer, And Drainage Utility Systems: Rating Methodology And Assumptions

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## Criteria I Governments I U.S. Public Finance:

# U.S. Public Finance Waterworks, Sanitary Sewer, And Drainage Utility Systems: Rating Methodology And Assumptions

1. Standard & Poor's Ratings Services is updating its methodology for assigning issue credit ratings, issuer credit ratings (ICRs), and ratings derived from stand-alone credit profiles (SACPs) based on waterworks, sanitary sewer, and drainage utility revenue pledges of local and regional governments (LRGs) and irrigation districts in the U.S. This follows the publication of "Request for Comment: U.S. Public Finance Waterworks, Sanitary Sewer, And Drainage Utility Systems: Methodology And Assumptions", on Dec. 10, 2014. These criteria supersede the following articles:
  - Standard & Poor's Revises Criteria For Rating Water, Sewer, And Drainage Utility Revenue Bonds (Sept. 15, 2008);
  - Key Water And Sewer Utility Credit Ratio Ranges (Sept. 15, 2008); and
  - Water And Sewer Ratings (June 25, 2007).
2. This article is related to our criteria article "Principles Of Credit Ratings", published on Feb. 16, 2011.
3. This update provides additional transparency and comparability to help market participants better understand our approach in assigning ratings to U.S. public finance waterworks, sanitary sewer, and drainage utility systems, to enhance the forward-looking nature of these ratings, and to enhance the global comparability of our ratings through a clear, comprehensive, and globally consistent criteria framework.
4. All terms followed by an asterisk (\*) are defined in the glossary in Appendix I. "Sewer", "sanitary sewer", and "wastewater" are assumed to be interchangeable terms. Similarly, "drainage", "stormwater", and "storm sewer" are also deemed to be interchangeable terms.

## I. SCOPE OF THE CRITERIA

5. The criteria apply to all issue credit ratings, ICRs, and SACPs assigned to waterworks, sanitary sewer, and drainage utility systems of a U.S. municipality or comparable political subdivision, including irrigation districts, whose financial obligations are secured by a pledge of revenues. We have observed that these utilities primarily rely on user charges for the ongoing operations of drinking and/or raw-water sales, sanitary sewer collection and/or treatment, and/or storm drainage systems, or some combination thereof, directly to the end (retail) customer. The public or municipal enterprises within the scope of this criteria include, generally, those with the following characteristics:
  - The entity is a political subdivision or a wholly-owned department of a political subdivision, even if there is a concession agreement with a private operator;
  - The entity has a public policy-making role, mission, or mandate to deliver an essential service deemed necessary for public health, and is not a commercial entity such as an investor-owned utility or a corporation (whether a bankruptcy-remote or single-purpose entity or not);
  - The entity primarily relies upon user charges and has ongoing cash from operations, and has at most minimal or

immaterial contractual payments or appropriations from a related political subdivision such as the general fund of the LRG; and

- The entity is not registered as a commercial enterprise or public corporation and does not pay dividends (other than to its affiliated general government), establish ownership shares, or access the equity markets.
6. While not an exhaustive list, examples of debt rated under these criteria are utility revenue bonds issued by a city, utility board, retail raw-water service providers such as irrigation districts, or regional authority that provides primarily retail water and sewer service. Examples of entities that are not rated under these criteria include investor-owned utilities, master limited partnerships, and limited liability corporations. Investor-owned utilities and corporations are rated using "Corporate Methodology", published Nov. 19, 2013, and "Key Credit Factors For The Regulated Utilities Industry", published Nov. 19, 2013. Master limited partnerships are rated based on "Methodology: Master Limited Partnerships And General Partnerships", published Sept. 22, 2014. If we believe that the contributions from the LRG or related taxing entity could significantly change the utility's financial condition, it would also fall outside the scope of these criteria.
  7. Entities whose revenues are derived entirely from sales for resale to other entities, such as traditional wholesale providers or joint action agencies, will continue to be evaluated based on the "Wholesale Utilities" criteria, published May 24, 2005. An LRG often also owns and/or operates other enterprises such as electric systems, gas distribution utilities, solid waste systems, or other utility services. While many of the themes addressed below also apply in part to those other enterprises, Standard & Poor's addresses rating criteria and methodology specifically and separately for those enterprises.
  8. Many LRGs issue general obligation (GO) or other tax-secured debt\* on behalf of the utility or the utility has the legal authority to issue it itself; in those cases, the applicable GO or special tax rating criteria and methodology will continue to be applicable. When more than one type of revenue secures the debt, we apply our criteria, "Methodology: Rating Approach To Obligations With Multiple Revenue Streams", published Nov. 29, 2011, to determine the rating approach.
  9. U.S. municipal utilities generally operate as either a department of an LRG or are themselves an LRG. We generally do not believe that the utilities benefit from an explicit or implicit level of extraordinary support from the U.S. federal government or state government in which the utility operates in case of distress. Therefore, very few of them are deemed a government-related entity (GRE). For those few rated utilities that are deemed to be a GRE, these criteria are used to determine the SACP, which is used as an input to the GRE criteria (see "Rating Government-Related Entities: Methodology And Assumptions", published March 25, 2015) to arrive at an ICR.
  10. We consider the strength of lease revenue or certificates of participation issued by utilities to be equivalent to a pledge of the same lien of revenues. There is, therefore, generally no rating distinction on these securities, reflecting the enterprise nature of public utilities. If a utility were to issue appropriation-secured debt that did not meet the above assumptions, we would apply our criteria "Appropriation-Backed Obligations", published June 13, 2007.
  11. Legal provisions, in our view, covenant the utilities to act—or not take action—in a manner that provides at least some minimal protections for the benefit of bondholders. As discussed further in paragraphs 112 and 113, we view legal provisions as generally being either credit-neutral or credit-negative. However, the complete absence of any document such as an indenture or bond resolution, or silence by existing related documents toward establishing an orderly flow

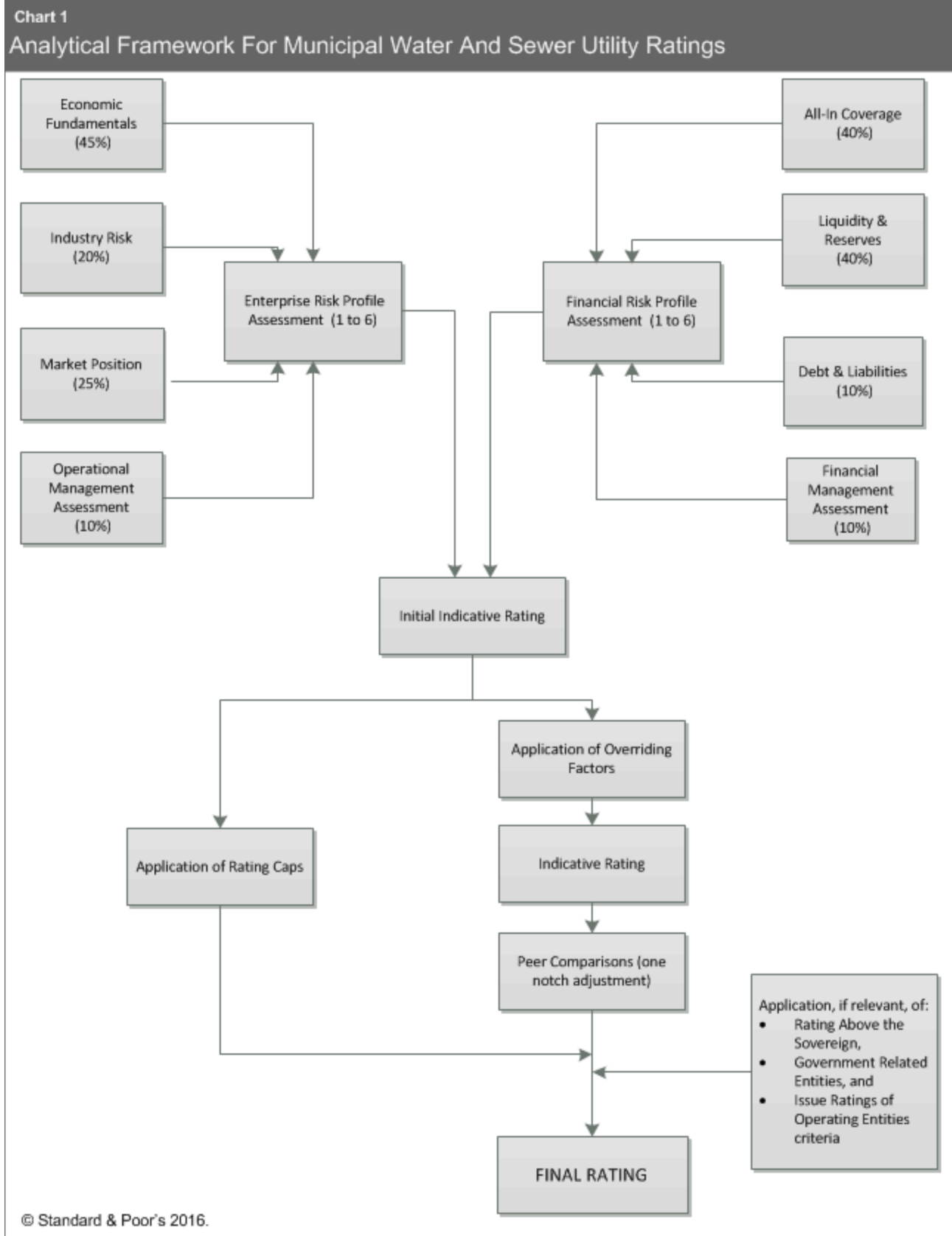
of funds, a lien on pledged revenues securing the bonds, a rate covenant, and an additional bonds test would likely preclude assigning an issue credit rating based solely on these criteria. Other criteria, however, such as, for example, general obligation bonds or multiple revenue streams, might instead apply.

## II. SUMMARY OF THE CRITERIA

12. These criteria use the same framework as our criteria for other municipal enterprise sectors. Specifically, these criteria assign ratings using a framework that considers enterprise risk (enterprise risk profile) and financial risk (financial risk profile). Chart 1 depicts how the enterprise and financial risk profile assessments interact to arrive at the initial indicative rating. The indicative rating is established after applying any appropriate positive or negative overriding factors. The final outcome—which could be an issue credit rating, SACP, or ICR—is reached after making any appropriate peer adjustments. The final rating may be capped based on the presence or absence of certain conditions or characteristics. If more than one cap is applicable, the final rating would be no higher than the lowest cap.
13. If a utility meets the guidelines outlined in "Criteria For Assigning 'CCC+', 'CCC', 'CCC-', And 'CC' Ratings" published on Oct. 1, 2012, then the rating will be assigned based on that criteria.
14. To increase the transparency in the rating methodology and improve the comparability of our ratings globally, the revised methodology is intended to:
  - Provide further detail on how we assess and calibrate each of the identified rating factors;
  - Offer a more detailed explanation of how we arrive at a utility rating through the analysis of the rating factors; and
  - Identify overriding factors that may result in a rating different from the initial indicative rating identified below.
15. The enterprise risk profile and financial risk profile will be measured through an evaluation of the following factors, with the respective weights in parentheses. The enterprise and financial risk profile assessments are rounded weighted averages of these factors.  
  
**Enterprise Risk Profile**
  - Economic fundamentals (45% of the enterprise risk profile assessment);
  - Industry risk (20%);
  - Market position (25%); and
  - Operational management assessment (10%).  
**Financial Risk Profile**
  - All-in coverage (40% of the financial risk profile assessment);
  - Liquidity and reserves (40%);
  - Debt and liabilities (10%); and
  - Financial management assessment (10%).
16. The initial assessment of each of the above factors may be strengthened or weakened by certain qualitative factors, as applicable, and as discussed in more detail beginning in paragraph 46, in order to arrive at the final assessment.
17. The initial indicative rating results from the combination of the enterprise and financial profile assessments in table 1.

18. In certain cases, the initial indicative rating in table 1 contains two options for a given combination of enterprise and financial risk profile assessments. In those cases, we would use our expectations of the utility's future performance to determine which of the two initial indicative ratings to use.
19. The indicative and the final rating could both be capped by the presence or absence of certain conditions, regardless of the rating outcome suggested by table 1. Rating caps are absolute, meaning that the positive relative adjustments described herein, including peer adjustments discussed in paragraph 21, do not apply and the indicative and the final rating cannot exceed the cap. These rating caps are summarized in table 2.
20. The indicative rating could differ from the outcome suggested by table 1 based on certain overriding factors that result in the indicative rating moving a specified number of notches above or below the initial indicative rating. These overriding factors are summarized in table 3.
21. The indicative rating could be raised or lowered by one notch to arrive at the final rating due to comparisons with similarly rated peers. Peer adjustments can be used to capture a more holistic view of creditworthiness. The holistic analysis includes rare or strongly positive or negative characteristics which the criteria do not separately identify. These criteria define peers as other municipal utilities. Peers may include other utilities with similar ratings, size, operational commonalities, geographic location, or financial profile characteristics. Based on our assessment, location may be defined as geographically contiguous or an area in another part of the country with similar economic and market fundamentals. Peer adjustments could also be made based on comparisons with sector-wide data, including ratio analyses. Peer groups may change through time as operating conditions or organization-specific features evolve.
22. The final rating may be constrained by the sovereign rating on the U.S., in accordance with "Ratings Above The Sovereign: Corporate And Government Ratings—Methodology And Assumptions", published on Nov. 19, 2013, as further explained in "Credit FAQ: U.S. Public Finance Ratings And Criteria For Ratings Above The Sovereign", published on Dec. 19, 2013.
23. We deem very few of the utilities rated by these criteria to be GREs. In rare cases where we deem a utility to be a GRE, we use these criteria to determine the stand-alone credit profile. The final rating is based upon our application of "General Criteria: Rating Government-Related Entities: Methodology And Assumptions" published March 25, 2015.
24. Issue credit ratings, including subordinate-lien debt, will be determined based on our view of the ICR and the legal/covenant package, as more fully described in "Assigning Issue Credit Ratings of Operating Entities", published May 20, 2015. Further guidance regarding our view of debt security and covenants is in paragraphs 112 and 113.





### III. IMPACT ON OUTSTANDING RATINGS

25. Standard & Poor's maintains issue credit ratings or issuer credit ratings on revenue-secured debt for almost 1,600 municipal utilities included in the scope of these criteria. We estimate that about 25% of the total ratings will change as a result of the application of these criteria; about half of which would be raised and the other half lowered, most often by one notch.

### IV. EFFECTIVE DATE AND TRANSITION

26. These criteria are effective immediately and apply to all new and outstanding ratings within the scope. We intend to complete our review of issuers affected within the next 12 months.

### V. METHODOLOGY

#### A. Overall Framework For Rating Municipal Utilities

27. These criteria are used to assign credit ratings to utilities based on quantitative and qualitative analysis of a range of economic, financial, operational, management, and debt factors. The analytical framework is articulated around two major components: the Enterprise Risk Profile and Financial Risk Profile. The enterprise and financial risk profile assessments are determined by combining (see chart 1) and then rounding to the whole number the weighted average of the individual factors (as outlined in paragraph 15). The initial indicative rating results from the combination of the enterprise and financial risk assessments as shown in table 1.

Table 1

Determining The Initial Indicative Rating						
Enterprise Risk Profile	Financial Risk Profile					
	1	2	3	4	5	6
	Extremely Strong	Very Strong	Strong	Adequate	Vulnerable	Highly Vulnerable
1 Extremely Strong	aaa	aa+	aa-	a	bbb+/bbb	bb+/bb
2 Very Strong	aa+	aa/aa-	a+	a-	bbb/bbb-	bb/bb-
3 Strong	aa-	a+	a	bbb+/bbb	bbb-/bb+	bb-
4 Adequate	a	a/a-	a-/bbb+	bbb/bbb-	bb	b+
5 Vulnerable	bbb+	bbb/bbb-	bbb-/bb+	bb	bb-	b
6 Highly Vulnerable	bbb-	bb	bb-	b+	b	b-

1. The initial indicative rating results from the interaction between the enterprise and financial risk profile assessments. Potential adjustments to the initial indicative rating are noted in Table 2. The final rating could be one notch higher or one notch lower than the indicative rating based on peer comparisons. 2. For ratings below 'B-' see "Criteria For Assigning 'CCC+', 'CCC', 'CCC-', And 'CC' Ratings", published Oct. 1, 2012, as well as "Methodology: Timeliness of Payments, Grace Periods, Guarantees, and Use of 'D' and 'SD' Ratings", published Oct. 24, 2013. 3. In certain cases, the initial indicative rating in table 1 contains two options for a given combination of enterprise and financial risk profile assessments. In those cases, we would use our expected view of the utility's future performance to determine which of the two initial indicative ratings to use.

28. The enterprise and financial risk profiles described in paragraph 15 may contain sub-factors. Each factor and sub-factor are assessed on a numerical scale, with '1' being the strongest outcome.

29. If the quantitative metric evaluating a particular factor falls at or near a cut-off point, we may assign the stronger assessment if trends are improving or we believe future metrics or attributes will improve, or the worse assessment if trends are weakening or we believe future metrics or attributes will deteriorate.
30. The initial, or anchor assessment for each factor may be adjusted based on qualitative factors for each characteristic or condition that may be present or lacking. Tables 6, 17, 19, and 21 describe some of the most common qualitative factors that could adjust each of the respective initial assessments. The maximum net adjustment to the initial assessments is two points. For example, if the initial assessment is a '3' and there are two favorable adjustments and one unfavorable adjustment identified, the final assessment for that factor would be a '2.' The liquidity and reserves assessment, however, can be capped at a '5' or worse regardless of the initial assessment based on paragraphs 99 through 101.
31. The criteria also include various caps and overrides (see paragraphs 32-41, as well as tables 2 and 3) to arrive at the indicative rating, as well as the ability to raise or lower the indicative rating by one notch based on peer comparisons (see paragraph 21) to establish the final rating. The final rating may be influenced by the rating on the U.S. or its associated country risk, as well as the assignment of issue credit ratings and use of subordinate-lien debt, in accordance with paragraph 24.

## B. Rating Caps And Overriding Factors

32. In certain, but rare, circumstances, the final rating is capped at a certain level. The final rating could be lower than the cap, depending on the severity of the condition present. The rating caps outlined in table 2 are absolute, meaning that the positive relative adjustments described below do not allow the final rating to exceed the cap. If multiple caps are applicable, the rating cap used will be the lower of all those that apply.

Table 2

Summary Of Factors That Cap The Final Rating	
Condition	Result
Either the Operational or the Financial Management Assessment is "Vulnerable" (see paragraph 34)	Indicative and final ratings are capped at 'A'
Both the Operational and the Financial Management Assessments are "Vulnerable" or there is a going concern opinion (see paragraph 34)	Indicative and final ratings are capped at 'BBB-'
Utility or its affiliated LRG is recovering from a financial crisis, emerging out of a recent bankruptcy or receivership, or has significant consultant oversight following an event of default, including a covenant violation (see paragraph 35)	Indicative and final ratings are capped at 'BBB+'
Negative extraordinary intervention (see paragraph 36)	Indicative and final ratings are capped at the lower of 'BBB' or the GO rating of the affiliated general government
Both the all-in coverage and liquidity and reserve assessments result in a '5' or worse (see paragraph 37)	Indicative and final ratings are capped at 'BB+' although if we view liquidity as especially vulnerable, the final rating would generally be capped at 'B+'
Either the Operational or the Financial Management Assessment is "Vulnerable" and the liquidity and reserve assessments are a '5' or worse (see paragraph 38)	Indicative and final ratings are capped at 'BB+'
Both the Operational and Financial Management Assessments are "Vulnerable" and the liquidity and reserve assessments are a '5' or worse (see paragraph 38)	Indicative and final ratings are capped at 'B+'
Management demonstrates a lack of willingness to support financial obligations, or we believe the utility may be considering bankruptcy or receivership filing (see paragraph 39)	Indicative and final ratings on any rated debt not in default are capped at 'B'

33. Certain conditions or characteristics result in an indicative rating that is different from the initial indicative rating, as follows in table 3. If multiple notch overrides are applicable, the indicative rating is based on the net effect of those overrides.

Table 3

Summary Of Overriding Factors	
Condition	Result
Median household effective buying income is among the top quintile of the U.S. (see paragraph 40)	Indicative rating generally will be one notch above that suggested by table 1
Median household effective buying income is among the top 10% of the U.S. (see paragraph 40)	Indicative rating generally will be two notches above that suggested by table 1
Median household effective buying income is among the lowest quintile of the U.S. (see paragraph 40)	Indicative rating generally will be one notch below that suggested by table 1
All-in coverage is at or above 3.0x or cash and investments are equivalent to at least 24 months of operating expenses (see paragraph 41)	Indicative rating generally will be one notch above that rating suggested by table 1
U.S. country risk assessment is '4', '5', or '6' (see paragraphs 44 and 45)	Final enterprise risk profile assessments capped at '4', '5', or '6'
Total indebtedness is likely to increase substantially, but magnitude, scope, and timing are not fully defined (see paragraph 82)	Final financial risk profile assessment generally will be worsened by one point

#### Factors That Cap The Indicative And Final Ratings

34. *Weak management.* The decentralized and autonomous nature of U.S. local governments creates a stronger link between management and credit quality. In cases where either the Operational or the Financial Management Assessment (OMA, FMA; see paragraphs 70 and 106) is characterized as 'vulnerable', the indicative and final ratings will be no higher than 'A'. In cases where both the OMA and FMA are characterized as 'vulnerable' or if an auditor has delivered a going concern opinion with the most recent review of the utility's or associated LRG's financial position, the indicative and final ratings will be no higher than 'BBB-'.
35. *Emergence from bankruptcy or receivership.* A utility that has just emerged from bankruptcy or receivership or a period of consultant or governmental oversight by definition has just been in a period where the financial risk profile—and possibly the enterprise risk profile as well—is extremely weak. Although a credit may emerge with an improved financial risk profile after debt forgiveness or other negotiated settlements or restructuring, or under a new management team, we will cap the indicative and final ratings at 'BBB+' until the utility has re-established a two- or three-year record of audited financial performance, at which time we would re-evaluate it using that new financial history as part of the analysis.
36. *Negative extraordinary intervention.* The line between what may be termed "extraordinary" and "ongoing" negative intervention is not always clear. However, examples of negative extraordinary intervention include cash-stripping or other measures that the affiliated LRG may impose to divert resources from the utility, as the LRG's needs rise. In such cases, the utility's indicative and final rating will be capped at the lower of 'BBB' and the GO debt rating of the affiliated LRG.
37. *Weak total liquidity combined with weak all-in coverage.* If the utility's all-in coverage as well as liquidity and reserves assessments are both a '5' or worse, we will cap the indicative and final ratings at 'BB+', although if we view liquidity as a weakness that cannot be rectified by other available resources, then the rating would be no higher than 'B+'. In our view, poor assessments on both of these factors imply that the utility has no margin for error in any of its operating, debt service, or capital funds in the event of an unfavorable or unplanned variance to its annual budget.



38. *Weak management and liquidity and reserves* Strong management alone can lend itself to operational and fiscal continuity and can serve as a credit stabilizer. In addition, liquidity and reserves provide working capital, funding for unexpected operational problems, and general budgetary flexibility. For example, if contingent liabilities become actual liabilities, both of these factors can together moderate or even relieve a utility from distress. Conversely, their absence creates a limiting factor and often leads to rapid credit deterioration. As such, when the OMA or FMA is characterized as 'vulnerable' and the liquidity and reserves assessments a '5' or worse, the indicative and final ratings are capped at no higher than 'BB+'. If both management assessments are characterized as 'vulnerable' and the liquidity and reserves assessments a '5' or worse, the indicative and final ratings are capped at no higher than 'B+'.
39. *Weak willingness or capacity to support financial obligations.* If the utility's or sponsoring governmental entities' representatives take actions that indicate active consideration of bankruptcy in the near term, or if there is a perceived change in the willingness or lack of capacity to honor all long-term, legally-binding financial obligations in full and on a timely basis, the indicative and final ratings will be capped at 'B'. If applicable, we would apply "Criteria For Assigning 'CCC+', 'CCC', 'CCC-', And 'CC' Ratings", published Oct. 1, 2012 or "Rating Implications Of Exchange Offers And Similar Restructurings", published May 12, 2009. Such a condition might be evidenced by way of conversations with management or governance, verifiable reports in the media, public disclosure, or other informational sources we judge to be relevant. The utility's issuer ratings would be 'D' or 'SD' following a default on an actual financial obligation, or in a distressed exchange, which we would apply "Rating Implications Of Exchange Offers And Similar Restructurings".

#### Factors That Notch From The Initial Indicative Rating

40. *Exceptionally strong or weak income indicators.* Extremely favorable or unfavorable demographics--measured as well above or below the strongest or weakest initial assessments, respectively--could imply extraordinary flexibility or limitation in a utility's ability to enhance its operating revenues on an ongoing basis. Median household effective buying income (MHHEBI) at or above the highest quintile of distribution according to the U.S. Census Bureau's and Bureau of Labor Statistics' joint "Current Population Survey" would generally result in a one-notch rating uplift from the initial indicative rating. Median household effective buying income at or above the top 10% of all households would receive a two-notch rating improvement. Median household effective buying income in the lowest quintile in the U.S. would lower the initial indicative rating by one notch.
41. *Exceptionally strong financial risk profile.* Should there be in our view a high probability that a utility's overall extremely strong financial risk profile is likely to continue on a forward-looking basis even when allowing for stresses, volatility, and additional future obligations, the initial indicative rating would generally be improved by one notch. "Exceptionally strong" is defined specifically to mean: a) All-in coverage\* at or above 3x; or b) Cash and equivalents, that (i) are unrestricted and/or designated but ultimately lawfully available for any general utility purposes; and (ii) are equivalent to at least 24 months of operating expenses (without giving favor to an already-existing debt service reserve fund, and calculated consistent with our definition of days' cash\*).

## VI. Enterprise Risk Profile Assessment

42. The factors that are evaluated for the Enterprise Risk Profile assessment are summarized in table 4.

Table 4

### Description Of Enterprise Risk Profile Factors

#### Economic Fundamentals (45% of Enterprise Risk Profile assessment)

Economic fundamentals measure the strength of the utility's service area economy, including the utility's demographics, characteristics and trends about the customer base, and how crucial the utility's principal customers are to operating revenues.

Table 4

Description Of Enterprise Risk Profile Factors (cont.)
<b>Industry Risk (20%)</b>
The industry risk evaluation aims to evaluate the external environment in which municipal utilities operate and its relevant characteristics, including cyclical, competitive risk, and growth environment.
<b>Market Position (25%)</b>
The market position measures the relative affordability of utility rates given the income indicators and relative poverty of the service area, as well as comparability of rates with those of peers in the region or state.
<b>Operational Management Assessment (OMA; 10%)</b>
The OMA evaluates our view of the effectiveness of utility management in ensuring that there is alignment of operational, environmental, strategic, and financial goals to support the system's success.

43. The descriptors of outcomes for the overall enterprise risk profile are based on the scales shown below in table 5. The criteria do not round to a whole number until arriving at a final enterprise risk profile.

Table 5

Descriptors For Enterprise Risk Profile Factors	
Assessment	Description
1	Extremely Strong
2	Very Strong
3	Strong
4	Adequate
5	Vulnerable
6	Highly Vulnerable

## Factors That Affect The Enterprise Risk Profile

Country risk assessment for the U.S.

44. The relevant credit risks for U.S. municipal utilities are also influenced by country-specific risks (see "Country Risk Assessment Methodology And Assumptions", published Nov. 19, 2013). Country risk is the risk an entity faces by having some of its operations or assets exposed to one or more countries. Country-specific risks consist of economic risks, institutional and governance effectiveness risks, financial system risk, and payment culture/rule of law risk. The country risk assessments determined on a scale from '1' (very low risk) to '6' (very high risk).
45. The country risk assessment with respect to these criteria derives from the U.S. country risk assessment as determined under the criteria cited above. If the U.S. country risk assessment is a '3' or better, there is generally no positive or negative impact on the final rating. However, if the U.S. country risk assessment is '4' or worse, this could affect the enterprise risk profile assessment. Specifically, if the U.S. country risk assessment is '4', '5', or '6', we will generally assign an enterprise risk profile assessment of no better than '4', '5', or '6', respectively.

## A. Assessing Economic Fundamentals

46. The assessment of economic fundamentals provides insight into the employment, socioeconomic, and demographic environment in which the utility operates as well as the health of the service area economy relative to that of the U.S. as a whole.
47. The assessment of economic fundamentals is based on two measures: median household effective buying income of the service area as a percentage of the U.S. and the trend in economic output of the service area, as measured by its real (inflation-adjusted) gross county product. If the service area spans multiple counties, these criteria pro rate the metrics based on the estimated population in each county as a percent of the total service area population.
48. The two components are combined (see table 6) to determine an initial economic fundamentals assessment. Positive and negative qualitative factors are then evaluated for applicability to achieve the final economic fundamentals assessment. The cumulative net effect of all adjustments is limited to an improvement or worsening of two points to the initial assessment.

Table 6

Assessment Of Economic Fundamentals			
Current Median Household Effective Buying Income (% of U.S.)	Real Gross County Product, Rate Of Change Last Two Years, Plus Projected Next Two Years [1]		
	Stronger than U.S. rate of GDP annual growth by 1% or more	Within +/- 1% of U.S. rate of GDP annual growth	Weaker than U.S. rate of GDP annual growth by 1% or more
125% or more	1	1	2
100% to 125%	1	2	3
75% to 100%	2	3	4
35% to 75%	3	4	5
35% or lower	4	5	6
Qualitative Factors Positively Affecting The Initial Assessment Include:			
Efficiencies and natural economies of scale associated with being a larger utility (see paragraph 50).			
Broad and diverse employment base, or ratepayers living in the service area have access to such a base (see paragraph 51).			
Unique key local employer, such as a university or military base, that serves to stabilize the economy, even if skewing income indicators unfavorably (see paragraph 55).			
Qualitative Factors Negatively Affecting The Initial Assessment Include:			
Unemployment rate of the county of 10% or worse.			
A steadily declining population, or dependent population* of more than 55%.			
The lack of efficiencies and natural economies of scale because the utility is smaller (see paragraph 50).			
Employment sector concentration, or inauspicious prospectsexist for a key major local employer within the next 36 months (see paragraph 54).			
The 10 largest customers account for 25% or more of operating revenues, or the top one is 10% or more (see paragraph 56).			
Each applicable qualitative factor changes the initial assessment by one point (with the exception of the economies of scale adjustor, which can result in a one-half point change), but the net total of all adjustments would never improve or worsen the initial assessment by more than two points. [1] For example, if the base/current year is 2015, the time period examined would be 2014 (actual, full-year); 2015 (annualized estimate); 2016 (forecast) and 2017 (forecast).			

49. For service areas in which there is no specific MHHEBI data available, the data from the next largest measurable



geographic unit will be used. For example, if the service area is that of a small unincorporated portion of a county and if that data is not available, the MHHEBI of that county will be used. An exception could be if there is clear evidence that the service area incomes and macroeconomic trends are materially and measurably different from the geographical unit at large, in which case we will use the best available data.

50. Certain natural operating efficiencies and economies of scale are often present in larger utilities. Examples may include physical redundancies or the ability to spread fixed costs over a greater number of gallons sold. These criteria define a utility's size based on average annual gross operating revenues of the three most recent audited fiscal years. Table 7 outlines the applicable adjuster that is combined with the result from table 6. For instance, if the three most recent years resulted in operating revenues of \$21.4 million, \$24.7 million, and \$29.8 million, the simple average of the three would be \$25.3 million, resulting in a neutral adjuster rather than a worsening by 0.5. Drainage-only utilities are excluded from this adjuster, as we believe they have an inherently lower operating risk and are usually smaller by revenues by their nature. Irrigation districts are separately addressed in paragraph 57.

Table 7

Economies Of Scale Qualitative Factor	
Total Operating Revenues (Mil. \$)	Change to Initial Assessment
More than 150	(1)
Between 75 and 150	(0.5)
Between 25 and 75	0
Between 5 and 25	0.5
Less than 5	1

51. We assess whether the utility's service area participates in a larger, broad, and diversified economy at the federally-defined metropolitan statistical area (MSA) level. The determination is based on an evaluation of employment diversity, employment growth, and the employment base. Each of these three factors is characterized as 'strong', 'moderate', or 'weak' consistent with a similar evaluation in "Local Government GO Ratings Methodology And Assumptions", published Sept. 12, 2013. Participation in a 'strong' MSA would generally lead to a one-point improvement in the initial assessment. Conversely, no adjustment would be applied if we deem the MSA as 'weak' or if the service area does not lie within a defined MSA. If the MSA is described as moderate, applying the broad and diverse positive adjustment may still be applicable if the macroeconomic trends of the MSA and our expectations for future performance in the next two years are reasonably likely to cause existing metrics to improve.
52. The diversification of the utility's service area's economic structure is important to assess the potential volatility of its employment base and its resilience to stresses. An example of a deep, broad, and well-diversified economy would be employment-sector distribution that closely resembles that of the U.S. at large. This depth and diversity could lessen the impact on the utility's operating revenues better than an economy with more exposure to a single employer or industry or only a few employment sectors. A small and concentrated or shallow economic base also tends to be more exposed to external factors and macroeconomic cycles.
53. If employment in an individual sector--excluding education/health, government, and transportation/trade/utilities--represents more than 30% of the nonfarm work base, the local economy is deemed to be highly susceptible to that employment sector. As such, a one-point worsening of the assessment would be applied.

An example would be a small town that does not participate in an MSA and has a major manufacturing component in the local labor force.

54. Regardless of the employment sector or nature of its business, if a major local employer has publicly announced that within the next 36 months it will be reducing or completely shuttering operations within the service area or we expect it to do so, a one-point unfavorable adjustment would be warranted.
55. If we do not deem there to be a broad and diverse economy, the presence of a major employer can still sometimes act as a stabilizing force, possibly even adding context to lower income indicators. In such a case, a favorable adjustment of one point may be applied. Examples of such major employers include higher education institutions, health care facilities, military installations or even, more rarely, a large and stable corporate presence.
56. Employment and customer base characteristics typically have a close correlation to utility operating revenues. If a small number of customers provide a large amount of revenues, the utility could be exposed to revenue volatility. As such, when the top 10 retail customers contribute 25% or more of total operating revenues, or the top one retail customer is 10% or more of total operating revenues, the assessments worsened by one point.
57. For irrigation districts and comparable raw-water providers for which the end-use customer is agriculture or agriculture-related—such as ranches or dairy—MHHEBI and relative economic performance are less meaningful. In our observations, these economies generally have inherent limitations given the dominance of farming to the local economy, and non-municipal consumptive use patterns. Therefore, for these issuers, the default initial economic fundamentals assessments a '3', although negative, but not positive, qualitative factors that adjust the initial assessment could still be applicable.

## B. Assessing Industry Risk

58. Consistent with "General Criteria: Methodology: Industry Risk", published Nov. 19, 2013, we consider industry risk for utilities covered under these criteria as very low, the most favorable assessment possible on a '1' to '6' scale, with '1' being the best.
59. The following are key characteristics of the utility industry as relevant to the industry risk factor:
- Cyclical risk assessment of '2' based on Standard & Poor's review of historic economic cycles and peak-to-trough changes in revenues and margins for regulated utilities. Economic cycles can affect nonrecurring revenues such as impact fees as well as drive priorities in the capital improvement plan but weather, not the economy, is generally the largest single determinant to a favorable or unfavorable variance to budget in any single fiscal year;
  - Very low competitive risk of '1', owing to legal and practical barriers to entry in nearly all jurisdictions, and that as an essential service there is no substitution risk;
  - Nearly all municipally-owned water, sewer, and drainage utilities are natural—and in most cases statutory—monopolies with complete autonomy over their own rates by the local decision-making body. There are some states in which the utility must seek approval of rate adjustments by some state regulatory body, such as a public service commission. There are also some states in which large rate increases, before they can take effect, may be subject to some kind of popularly-initiated opportunity to be overturned by the electorate, such as in California via Proposition 218.

The industry risk assessment of very low risk applies to all utilities rated by these criteria regardless of the state in which they operate. While likely uncommon, limitations on rate autonomy would likely be measured elsewhere, such as in financial performance if the timeliness and magnitude of requested versus granted rate case leads to deterioration in credit quality.

## C. Assessing Market Position

60. The relative poverty rate is important because service areas that have not just lower MHHEBI levels, but disproportionately higher percentages of the population located in the lowest quintiles of the MHHEBI distribution curve, may exhibit greater sensitivity toward perceived affordability even if adjusted for low inflation or a favorable cost of living. Therefore, it is possible that the impact of utility bills and related rate increases is even more profound in those communities compared to communities with stronger economic fundamentals.
61. Actual consumption patterns vary from region to region based mainly on climate, precipitation, use of demand side management and water conservation measures, and economic factors. The market position assessments based on the actual average monthly residential water and sewer bill. The information generally will be based on the most recent audited fiscal year, unless we believe that historical rates are not indicative of future rates. In those cases we will base the assessment on projected rates. For purposes of this assessment we calculate the monthly bill as follows:

The total annual residential operating revenues plus any related fees, surcharges and taxes divided by the number of active residential metered accounts. The result is divided by 12 to arrive at the monthly bill.

62. There could be practical limitations to applying paragraph 61 such as transparent and timely financial reporting and disclosure details, the sophistication of the utility's customer information system database, and the possibility that the utility may deem this information as competitively sensitive and nonpublic. If the actual average monthly residential bill is not readily available, the market position assessment assumes a residential customer that in one month has used 6,000 gallons of both treated water and sanitary sewer service, conceptually similarly to the Environmental Protection Agency (EPA)'s residential indicator (see Appendix III, paragraph 133). In cases where the utility's chosen unit of billing is measured in hundred cubic feet (ccf), the closest rounded equivalent of 8 ccf is used (see Appendix III, paragraph 135). Any minimum or base charge or 'lifeline rate' is also included in the calculation, as are any related fees, surcharges, or taxes regardless of who is levying them since the burden ultimately still lies with the customer to pay it.
63. To gauge the annual utility burden to the household, the assumed monthly bill, as calculated above in paragraph 61 or 62, is multiplied by 12 to estimate the total annual cost to the household for utility service.
64. Relative rate affordability is calculated as follows: in the numerator is the annual household utility burden as calculated above from paragraph 63, and in the denominator the actual median household effective buying income of the service area of the utility (or the closest approximation, as established in paragraph 49), then multiplied by 100. This produces the cost to the household of its utility expenses as a percentage of total disposable income.
65. For irrigation districts, the customer base is primarily farms in agricultural production rather than residential customers

that rely on the system for essential public health needs, and in this context, poverty rates do not apply. However, the pricing power of many irrigation districts is constrained by the more elastic demand for water from these businesses, and in many cases the availability of alternative supply sources, such as groundwater produced from privately-owned wells. Therefore, for these issuers, the default initial market position assessments a '3', although negative, but not positive, qualitative factors that adjust the initial assessment could still be applicable should they, in our view, affect the system's revenue-raising flexibility.

66. For drainage utilities rated by these criteria, rate structures tend to be exclusively either one of two types:

- A flat monthly charge tied to a residential property as the base unit of billing, with larger properties or parcels assessed as if they were equivalent to multiple residential properties. For example, a strip mall may be treated for billing purposes as if it were five equivalent residential units. For those utilities whose charges are based on a flat fee, we assume the fee assessed on a single-family residential property; or
- A fee based on the actual impervious surface area of the property. (Standard & Poor's assumption for the monthly bill is based on a residential property. For those utilities whose charges are based on impervious surface area rather than a flat fee, we assume 2,000 square feet of impervious surface area.)

67. Tables 8, 9, and 10 summarize how the criteria evaluate the market position of the utility, driven by the rate affordability and relative poverty rate. Table 8 applies to water-, or drainage-only utilities. Table 9 applies to sewer-only utilities. Table 10 applies to water and sewer/drainage utilities.

Table 8

Market Position Assessment, Water- Or Drainage-Only Utilities			
	Annual Utility Bill As A Percent Of Median Household Effective Buying Income		
Percent of county's population living in poverty	Less than 1%	1% to 2%	More than 2%
Less than 10%	1	2	3
10% to 20%	2	3	4
20% to 30%	3	4	5
More than 30%	4	5	6

For utilities with an anchor assessment of 5 or 6 that have recently completed or achieved substantial completion of a historically capital-intensive period, the anchor assessment may improve by one point (see paragraph 68).

Table 9

Market Position Assessment Sewer-Only Utilities			
	Annual Utility Bill As A Percent Of Median Household Effective Buying Income		
Percent of county's population living in poverty	Less than 1.25%	1.25% to 2.50%	More than 2.50%
Less than 10%	1	2	3
10% to 20%	2	3	4
20% to 30%	3	4	5
More than 30%	4	5	6

For utilities with an anchor assessment of 5 or 6 that have recently completed or achieved substantial completion of a historically capital-intensive period, the anchor assessment may improve by one point (see paragraph 68).

Table 10

Market Position Assessment For Water And Sewer/Drainage Utilities			
	Annual Utility Bill As A Percent Of Median Household Effective Buying Income		
Percent of county's population living in poverty	Less than 2.25%	2.25% to 4.50%	More than 4.50%
Less than 10%	1	2	3
10% to 20%	2	3	4
20% to 30%	3	4	5
More than 30%	4	5	6

For utilities with an anchor assessment of 5 or 6 that have recently completed or achieved substantial completion of a historically capital-intensive period, the anchor assessment may improve by one point (see paragraph 68).

68. Rate affordability without context may under- or over-represent credit strengths. For example, a utility with rates much higher than comparable peers that has already made the capital commitments to address a regulatory mandate driven by past noncompliance with environmental permits would be viewed more favorably than a utility with similarly high rates but that is facing a huge unfunded regulatory mandate. For utilities that have relatively high rates—as defined by an initial assessment of a '5' or '6'—but have recently completed or substantially completed an extraordinarily capital-intensive period in its history, the initial market position assessment generally will be improved by one point.
69. The criteria do not establish a preference toward a certain water and sewer utility rate structure. For example, management may use a flat or fixed rate, volume-based rates, or some combination thereof. Similarly, the criteria do not penalize a rate structure that encourages conservation—essentially incentives for lower sales through price signals.

## D. Assessing Operational Risk Management

70. The Operational Management Assessment (OMA) consists of a review of the following sub-factors, assessed from (1) strong; (2) good; (3) standard; to (4) vulnerable and weighted as shown below to calculate the OMA:
- Asset adequacy and identification of operational risks (40%);
  - Organizational effectiveness, management expertise, and drought management plan (20%); and
  - Rate setting practices (40%).
71. The OMA refers to risks associated with the operation of the utility; financial policy is covered by the Financial Management Assessment.
72. The results from the observed evaluations assessed in paragraph 6 are converted to a '1' to '6' scale as shown in table 11.

Table 11

Operational Management Assessment (OMA) Conversion To Six-Point Scale		
Observed Evaluation	OMA	Characterization
1.0 to 1.2	1	Strong
1.2 to 1.8	2	Good
1.8 to 2.5	3	Good
2.5 to 3.1	4	Standard
3.1 to 3.6	5	Standard



Table 11

Operational Management Assessment(OMA) Conversion To Six-Point Scale (cont.)		
3.6 to 4.0	6	Vulnerable

73. The assessment of all sub-factors is based on a preponderance of evidence. Specifically, in our judgment are most, but not necessarily all, of the described characteristics applicable? A utility receives a neutral assessment if 'standard' for any sub-factors for which there is insufficient evidence to assign either a positive or negative assessment. However, some sub-factors may receive a negative assessment if a utility has a record of failing to disclose key relevant information.
74. There is no favored governance structure for the utility within the methodology. Some municipal utilities are a department or component unit of the local political subdivision, governed by the same locally elected officials as the LRG. Other utilities are governed by an independent or quasi-independent utility board. The governance structure will be credit-neutral so long as there seems to be the ability for management to operate the utility as an ongoing, viable enterprise, largely independent from politics, with professionals who are capably engaged in risk oversight and can balance interests appropriately.
75. Asset adequacy and identification of operational risks examine how successfully management is faring by owning and operating a public water, sewer, or drainage enterprise (see table 12). Utilities are subject to the federal Safe Drinking Water Act of 1974 ("SDWA", 42 U.S.C. § 300f, as amended) and Clean Water Act of 1972 ("CWA", 33 U.S.C. § 1251, as amended), or even an municipal separate storm sewer system (MS4) drainage utility permit. However, the utility may be in various degrees of compliance or readiness. Examples include a long-term water supply that is appropriate in both quantity and quality to serve the existing and likely future customer base or treatment capacity that is sufficient to meet average and peak day demand. Recognition is given for any water reuse system in place, whether indirect or direct. Also assessed in this sub-factor is the materiality of nonrevenue water\* (see Appendix II, paragraph 136).

Table 12

Asset Adequacy And Identification Of Operational Risks Assessment	
<b>Strong</b>	The utility has in place or is in the process of securing a raw-water supply that is reasonably projected to be sufficient through the life of the bonds. The integrity of the distribution and/or collection system, meters, and raw-water delivery assets is strong, or efforts are ongoing to rehabilitate them. Treatment capacity to meet average and peak day demand is sufficient in virtually every circumstance. Climate risk assessments incorporated into planning and operations as a potential risk to the system. Water audits based on industry-accepted performance standards are incorporated into the annual budget such that nonrevenue water physical and economic losses are not material. A thorough vulnerability assessment across all critical assets has been performed to industry standards and been completed and incorporated into operations as much as reasonably possible.
<b>Good</b>	The existing raw-water supply is sufficient for the existing customer base. The utility may need to enhance the supply sometime beyond the next 20 years, depending on growth and climatology/hydrology, but management has identified this risk into its long-term plans. Inflow, infiltration, and/or raw-water delivery are generally not problematic, or efforts are ongoing to rehabilitate them. Treatment capacity to meet average and peak day demand or flow is sufficient with only rare exceptions. Climate risk assessments addressed in some key areas, such as supply planning or flood protection. Water audits based on industry-accepted performance standards are done on a regular, if not annual, basis such that nonrevenue water physical and economic losses are small. A vulnerability assessment has been completed to industry standards in most key areas and incorporated where management most deems relevant.
<b>Standard</b>	The existing raw-water supply will likely need to be enhanced within the next 10 to 20 years, but options for addressing the need have not yet been identified or, if so, have not been fully priced. Inflow, infiltration, and/or raw-water delivery are pronounced but not yet material or are problematic but will be addressed within the current capital improvement plan. Treatment capacity to meet average day demand is sufficient, but peak day demand or wet weather flows create constraints until ongoing projects are completed. Climate risks are identified, but other priorities preclude any immediate actions. Water audits based on industry-accepted performance standards are done only when management deems them necessary, likely evidenced by nonrevenue water economic and physical losses that are material. A vulnerability assessment has been done, perhaps only partially or perhaps not in accordance with industry standards, and implementation has been either partial or not at all.
<b>Vulnerable</b>	The existing raw-water supply and/or treatment capacity cannot currently and consistently meet peak day demand or flows. The raw-water supply is subject to a high degree of regulation and/or litigation, which can quickly introduce long-term uncertainty. Inflow, infiltration, and/or raw-water delivery are problematic and material, or the utility is highly dependent on or susceptible to another water purveyor. Climate risk is not explicitly addressed either in plans or operations. Water audits based on industry-accepted performance standards are not done and nonrevenue water economic and physical losses are problematic. No vulnerability assessment has been done.

76. To evaluate organizational effectiveness, management expertise, and drought management planning, the assessment looks to the key elected or appointed decision-makers and top staff (see table 13). This sub-factor assesses how well utility leaders are able to convey the needs of the utility to external and internal stakeholders in a manner that is likely to allow the utility to continue with stability. While there may be some practical limitations due to civil service regulations, mentoring and succession planning among key staff can ensure continuity. Also evaluated is whether or not the utility has a resource management plan (voluntary or mandatory) that outlines steps it would implement in a drought situation, even if the state has its own rules or guidelines. This would be deemed separate from any existing water conservation-oriented rate schedule the utility may already have in place year-round.



Table 13

Organizational Effectiveness, Management Expertise, And Drought Management Plan Assessment	
<b>Strong</b>	Management communicates the utility's long-term needs and strategic goals, such as funding requirements, approval of crucial projects, and resource planning, to internal and external key officials on a regular, credible, and transparent basis, putting the utility in the best reasonable position for operational continuity. Examples might include ongoing public education campaigns, town halls, dedicated web sites, and social media. Management has considerable knowledge, experience, or a track record of success in operating all of the utility's key business units in an integrated fashion. Internal mentoring and succession plans are common. Management is able to put its strategic planning into reality; therefore, the utility is successful relative to its peers. The utility has its own drought management plan that details how much conservation it would seek depending on a drought's severity while still ensuring revenue requirements are met.
<b>Good</b>	Public outreach and transparency is a common part of the organizational culture, even if not comprehensive across all key business units. Management has reasonable expertise and experience and has established pathways for succession and continuity where it can; therefore, operational surprises are rare. Management has a good track record of successfully converting strategic decisions into constructive action. The utility has its own drought management plan that details how much conservation it would seek depending on a drought's severity although how it might meet its revenue requirements in such a scenario is uncertain.
<b>Standard</b>	Management depth or breadth is limited in some areas, such that the loss of key personnel would create, only temporarily, a learning curve for the new staff but not likely to measurably affect the utility for long. Public outreach is done generally only when necessary, often associated with a large or controversial project. Operational and financial strategies are generally aligned. The utility has no drought management plan but does operate in a state with a clearly detailed plan that already exists.
<b>Vulnerable</b>	The utility relies on one or only a few key employees or perhaps relies on external consultants. Negative variances are not uncommon. The utility has a history of regulatory or legal infractions beyond an isolated episode or outside industry norms, which introduced an as-yet-unaddressed challenge. Operational and financial strategies may have had one or more major misalignment, limiting the ability to move forward on something important. Neither the utility nor the state in which it operates has an existing drought management plan, making resource sustainability as well as meeting financial obligations uncertain.

77. Most, but not all, utilities are monopolies with autonomy over their own rates. If the utility is rate-regulated, the history of timeliness on rate cases and the magnitude of what was granted versus requested will be examined. The evaluation of rate-setting practices looks beyond magnitude or frequency of rate adjustments. Instead, we evaluate whether management has acted, in our opinion, in a manner generally supportive of credit quality when tough decisions have needed to be made. Such credibility can also aid community support when such increases are needed and help protect future rate-making decisions from short-term political manipulation and decrease the potential for rate shock (see table 14).

Table 14

Rate-Setting Practices Assessment	
<b>Strong</b>	When rate increases have been needed, the decision-making body has been supportive and timely, even to the extent that multiyear, preapproved rate increases are common, if not standard. Financial decisions are prudent, in our view, rather than simply politically expedient and that could possibly be to the detriment of the utility's near-term financial health. Periodic rate studies (internal or external) are common.
<b>Good</b>	Rate considerations are done on a year-to-year planning horizon rather than over a long-term time frame, but generally are a politically approved if and when necessary.
<b>Standard</b>	The rate covenant and/or additional bonds test are the de facto guide as to when rate adjustments are necessary, but that is still enough for the political decision makers to agree to a rate increase.
<b>Vulnerable</b>	Rate increases are often in reaction to a weakened financial position, including a technical default or some other legal covenant violation, even if the recent debt service payments were made on time and in full. There is clear evidence of recent political decisions to defer or downsize needed rate increases.

## VII. Financial Risk Profile Assessment

78. The factors that are evaluated for the Financial Risk Profile assessment are summarized in table 15.

Table 15

Description Of Financial Risk Profile Factors
<b>All-In Coverage (40% of Financial Risk Profile assessment)</b>
Analysis includes examination of historical and preferably GAAP-based results, the current financial condition of the utility, and projected scenarios for the next one to three fiscal years. The focus is on total financial capacity versus total revenue requirements.
<b>Liquidity and Reserves (40%)</b>
This factor incorporates all lawfully available cash reserves and external working capital or liquidity sources, including bank lines in force within the life of any short-term obligations.
<b>Debt and Liabilities (10%)</b>
This factor incorporates mainly quantitative, but also qualitative, analyses about not just the absolute measure of the utility's indebtedness but also the capacity to incur and support additional debt, especially in relation to maintaining any minimum financial metrics as covenanted to bondholders. Measurable liabilities such as pension and postemployment benefits can lead to adjustments to this initial factor.
<b>Financial Management Assessment (10%)</b>
Analysis includes an evaluation of ongoing management practices and policies that can be supportive of financial performance and continuity, as well as internal controls and reporting. Examples include establishing a minimum level of acceptable working capital, predictability of cash transfers from the utility system, and creating and perpetually updating a long-term financial forecast.

79. The descriptors for the overall financial risk profile are based on the scale in table 16.

Table 16

Descriptors For Financial Risk Profile Factors	
Description	Corresponding Assessment
Extremely Strong	1
Very Strong	2
Strong	3
Adequate	4
Vulnerable	5
Highly Vulnerable	6

80. These criteria use assessments derived from historical and projected financial performance. In most cases, the ratio calculations are based on the three most recent independently audited financial statements. Our analytical assessment of pro forma or projected data will be used for those ratios affected by additional debt issuance or funded from cash reserves, or when we believe that historical financial performance is not representative of expected future performance.

81. For all-in coverage or liquidity and reserves assessments that use multiple years of historical and projected data, each single year receives a preliminary assessment. The preliminary assessments from each applicable year are averaged together to then derive one single assessment for that factor.

## Factors That Affect The Financial Risk Profile

Significant additional upcoming debt

82. If a utility has potentially sizable, but as yet unspecified, capital plans that could result in material additional debt and/or the use of reserves—including when there is or will be high levels of non-discretionary capital funding, and we determine that such plans have a reasonable likelihood of occurrence but are not specific enough yet to determine pro forma or projected financial metrics—we generally will worsen the entire financial profile by one point. Compelling factors that would likely preserve credit quality include preapproved rate adjustments multiple years into the future, or an existing debt service schedule that allows for the new debt to be layered on in a manner that we believe is unlikely to worsen financial performance.

### A. Assessing All-In Coverage

83. While there are a variety of financial metrics that measure the ratio of revenue to revenue requirements, including financing obligations, we believe that all-in coverage best gauges the utility's true total financial capacity.
84. All-in coverage is our internally adjusted debt service coverage metric that we believe best tracks the use of every dollar of utility operating revenues, regardless of lien position, accounting treatment or ultimate purpose. It also incorporates recognition of fixed charges or costs, which we define as certain long-term recurring items that are debt-like in nature, even if legally treated as an operating expense. An example of a fixed cost would be the take-or-pay minimum payment to the utility's wholesale provider of treated water. Other examples of fixed costs would include rental expenses for a sale-leaseback arrangement, GO debt which we consider self-supporting debt\*, or other situations that reflect support of off-balance sheet debt. Vertically integrated utilities may not have any fixed costs. We would not include any tax-supported debt for which there is a dedicated tax revenue, nor would we include the tax revenue itself that is meant specifically to pay the tax-supported debt. All-in coverage also excludes adjustments to fixed costs for small or non-material financing obligations such as a capital equipment lease for a vehicle or copy machine.
85. These criteria also look to total revenues less expenses (but excluding non-cash items), even if the pledge to bondholders is gross operating revenues. This is because we assume that the utility must be a viable, ongoing, cash flow-positive enterprise. Standard & Poor's defines all-in coverage as:

$$\frac{[(\text{Revenues} - \text{Expenses} - \text{Total Net Transfers Out}) + \text{Fixed Costs}]}{(\text{All Revenue Bond Debt Service} + \text{Fixed Costs} + \text{Self-Supporting Debt Service})}$$

Total net transfers out are defined as transfers from the utility fund minus transfers into the utility fund, including but not limited to:

- Transfers that are viewed as general fund resources, such as a payment in lieu of taxes, indirect cost reimbursements, and open-ended transfers;
- Transfers that reimburse the general fund for pension and other postemployment benefit (OPEB) payments to the

general fund made on behalf of utility employees and retirees;

- Transfers that fund pay-as-you-go capital expenditures in another governmental fund; and
- Transfers to support any other governmental operations regardless of the destination fund.

We deem net transfers out that legally or by practice support debt service of another governmental fund as part of the denominator's self-supporting debt. Cash that does not truly leave the utility, such as a set-aside into a rate stabilization reserve or pay-as-you-go fund are not included as transfers out. Similarly, the application of a rate stabilization fund (RSF) or other cash on hand as a transfer in would not be included in the all-in coverage calculation, although we would note the presence and use of the RSF as a qualitative adjustment to the all-in coverage assessment as described in paragraph 89.

86. The accounting treatments and even provisions in the bond documents vary; for example transfers are usually a use of surplus net revenues, but sometimes may be treated as an operating expense. The methodology would treat recurring transfers as an operating expense to measure the general government's reliance on the transfer payment. An annual transfer payment that is consistent in nature, such as based on a percentage of operating revenues or a fixed dollar amount, is more predictable than one that is not defined and therefore could be as big as the general government decides it should be. For example, an all-in coverage calculation of less than 1x might suggest a net cash withdrawal from the utility fund. Table 17 summarizes the all-in coverage evaluation.
87. In cases where an unconditional take-or-pay minimum, capacity payment or demand charge does not exist or is not explicit, these criteria will impute what we deem to be a logical and reasonable equivalent for the purpose of calculating all-in coverage. The methodology uses the utility's relative contribution to its wholesaler provider's total operating revenues as the basis for the fixed-cost imputation. For example, if the utility being rated accounts for 15% of its wholesaler provider's total annual operating revenues, and the wholesaler's total annual debt service payments are \$10 million, then \$1.5 million will be imputed as fixed costs for all-in coverage calculation purposes.

Table 17

Assessment Of All-In Coverage	
Initial Assessment	All-In Coverage
1	1.60x or above
2	1.40x to 1.60x
3	1.20x to 1.40x
4	1.10x to 1.20x
5	1.00x to 1.10x
6	Below 1.00x
<b>Qualitative Factors Positively Affecting The Initial Assessment Include:</b>	
A significant portion of operating revenues have a high degree of certainty, such as from wholesale sales with take-or-pay minimums, even if those wholesale sales serve to depress total debt service coverage due to cost-of-service rates (see paragraph 88).	
The planned, but infrequent use of a rate-stabilization fund indicates the absence of a weakness, all other things being equal, as opposed to the presence of a credit-positive characteristic. Still, it could explain poor coverage that has otherwise been consistently better (see paragraph 89).	
<b>Qualitative Factors Negatively Affecting The Initial Assessment Include:</b>	
A debt service schedule that makes it extremely likely the utility will need significant growth or large rate increases to meet future requirements, such as a deferral of principal repayment far into the future.	



Table 17

### Assessment Of All-In Coverage (cont.)

Debt service coverage that is reliant on new customer fees or nonrecurring nonoperating cash inflows just to achieve a ratio of at least 1x (see paragraph 90).

Exposure to interest-rate sensitivity via variable-rate debt that is enough to lead to a worse initial assessment (see paragraph 91).

Each applicable qualitative factor changes the initial assessment by one point, but the net total of all adjustments would never improve or worsen the initial assessment by more than two points.

88. Some utilities provide mostly retail service directly to the consumptive-use customer, but may also generate operating revenues via sales for resale, or wholesale sales. Wholesale sales are often at a cost-recovery rate with much smaller net operating margins, serving to depress total all-in coverage. For utilities with between 20% and 49% of operating revenues coming from firm (contractual) wholesale sales, a one-point improvement in the all-in coverage assessment would be applied to put the depressed all-in coverage into better context.
89. The planned use of rate stabilization funds (RSF) or equivalent designated reserves from time to time could, analytically, temper measurable declines from a trend of stronger financial performance. Yet recurring reliance on an RSF in lieu of other measures such as rate adjustments to address imbalances among revenues, expenses, and debt service can be evidence of a credit weakness. Utilities that perform down to the level of permissive legal covenants, such as the allowance of the use of certain cash balances toward satisfying a rate covenant or additional bond test and potentially creating a weak alignment between revenues and expenses, would see the initial assessment lowered by one point. This is especially true when actual performance indicates insufficient pledged revenues without the use of cash.
90. It is not uncommon for utilities to charge a one-time fee as new structures hook up to the system (exclusive of any deposit that may be required), often called a connection or impact fee. The all-in coverage ratio will be stressed by hypothetically removing these nonrecurring items from total revenues, to gauge a utility's relative dependence upon these fees just to achieve sufficient financial performance. Such fees are strongest during periods of high growth in the number of metered accounts. While perhaps they are pledged revenues, impact fees can overstate revenues available for debt service. Conversely, a slowdown or cessation of such growth—especially if not expected by management—could create a precipitous drop in the utility's financial performance and expose vulnerability in the financial risk profile. Achieving a ratio of less than 1x solely from recurring revenues on a consistent basis indicates structural budgetary imbalance and would worsen the assessment by one point.
91. These criteria do not establish a guideline as to an allocation of variable-rate debt as a percentage of total long-term debt. However, if all-in coverage by our projections would change between one of the initial assessments to another in table 17 as a result of a change in interest rates, the all-in coverage assessment will reflect the worse of the two possible outcomes.

## B. Assessing Liquidity And Reserves

92. The liquidity and reserves analysis measure is days' cash\* available to the utility as well as the actual available cash reserves. As noted in paragraph 50 for the enterprise risk profile assessment, size is also a factor in the utility's financial

risk profile. A utility may have cash reserves, for example, that are equivalent to a high days' cash number yet the actual cash on hand may be nominally very small. Both days' cash and actual cash are evaluated based on table 18. The resultant preliminary evaluations are applied to table 19 to produce the initial liquidity and reserves assessment.

93. For example, a utility with \$1.2 million of cash on hand, which for this example equated to 74 days of operating expenses, would receive a '3' for the days' cash ratio, and a '4' for the actual cash levels, based on table 18. When each preliminary evaluation is applied to the matrix in table 19, the initial liquidity and reserves assessment would be at the intersection of (3, 4), or an assessment result of '4.' Qualitative factors, if any, would then be applied to improve or worsen the '4' to arrive at the final liquidity and reserves assessment.
94. The liquidity and reserves assessments intended to measure how the utility's internal sources, such as cash reserves and cash flow generation, and external sources—namely undrawn capacity under committed lines of credit—provide it the working capital to fund immediate need on an ongoing basis. The undrawn, available portion of committed bank lines maturing beyond the next 12 months are included as cash for the calculations in table 18; draws are included with both long-term debt and, if due within the next 12 months, debt service.
95. The liquidity analysis looks not only to cash and equivalents that are unrestricted or unassigned (i.e., unencumbered by legally enforceable agreements and not earmarked for specific purposes) and immediately available, but also gives credit to reserves that are designated, but ultimately available, for any lawful purpose. Examples include renewal and replacement funds, RSF, or other similar set-aside (but not truly restricted) cash. The criteria make no distinction between reserves that can only be appropriated by action of the highest decision-making body, or reserves that can be appropriated by simple administrative action, so long as the reserves are ultimately lawfully available for any purpose regardless of the reporting entity's label on it as determined by Governmental Accounting Standards Board (GASB) statement No. 54. Issuers that do not use a generally accepted accounting principles (GAAP) basis of presentation, or for which the financial statements do not provide a transparent and explicit breakdown of cash, must provide details of their cash position.
96. Cash that we deem to be restricted—for example a debt service payment-to-be-made, customer deposits, a fiduciary responsibility like a pension or decommissioning fund, unspent bond proceeds, or is related to a posting of collateral, among other restrictions—will never be included in the analysis of liquidity. Any debt service reserve fund will also be excluded.
97. Intragovernmental borrowing sometimes occurs between the utility and its associated general government, or sometimes even between one division of the utility and another division. Cash in other funds in most cases would not be used to calculate the liquidity ratios, since those other funds likely have their own operating requirements. If a utility pools its cash with other major operating funds or governmental units, only cash that is truly the utility's will be counted in the calculation.

**Table 18**

Liquidity And Reserves Preliminary Evaluation		
Preliminary Assessment	Days' Cash	Actual Cash
1	Greater than 150	More than \$75 million
2	90 to 150	\$20 million to \$75 million

Table 18

Liquidity And Reserves Preliminary Evaluation (cont.)		
3	60 to 90	\$5 million to \$20 million
4	30 to 60	\$1 million to \$5 million
5	15 to 30	\$500,000 to \$1 million
6	Less than 15	Less than \$500,000

Table 19

Liquidity And Reserves Assessment						
Days' Cash Ratio, Preliminary Evaluation		Actual Cash On Hand, Preliminary Evaluation				
		1	2	3	4	5
1		1	1	2	2	3
2		1	2	2	3	3
3		2	2	3	4	4
4		2	3	4	4	5
5		3	3	4	5	5
6		4	4	5	5	6

**Qualitative Factors Positively Affecting The Initial Assessment Include:**

The utility is a distribution- and/or collection-only system with predictable wholesale costs, reducing the level of working capital the utility needs to maintain (see paragraph 98).

**Qualitative Factors Negatively Affecting The Initial Assessment Include:**

Liquidity is skewed by seasonality or is otherwise not indicative of actual averaged daily working capital levels.

The lack of a "pass-through" component to the rate structure if the utility could face the potential of rapid volatility in operating costs, such as raw-water or commodity costs, implying the utility is using its own cash to subsidize changes in expenses.

High refinancing risk over the next two to three years.

Exposure to contingent liabilities can cap this assessment at a '5' or a '6' (see paragraphs 99 to 101 and table 20).

Each applicable qualitative factor changes the initial assessment by one point, but the net total of all adjustments would never improve or worsen the initial assessment by more than two points unless an assessment cap of '5' or '6' is applicable.

98. In cases where the utility is a distribution- and/or collection-only system and off-balance sheet obligations are predictable, the utility's working capital requirements, and therefore liquidity levels, may not need to be as high. In those cases, the liquidity and reserves assessment may be improved by one point.
99. As described in "Contingent Liquidity Risks", published March 5, 2012, contingent liabilities\* correspond to explicit or implicit obligations that a utility may incur under certain circumstances. These risks could affect the utility's financial position if they materialize and if not otherwise offset by factors such as available liquidity, undrawn capacity under committed lines of credit, or market access. Furthermore, contingent liabilities might arise from a series of smaller risks that, by themselves, may not otherwise appear material, but could cascade in magnitude as proximity to the trigger or timing becomes less remote.
100. These criteria measure both contingent liabilities as a percentage of total long-term debt, as well as available reserves\* that may be legally utilized to mitigate some or all of the potential claims on the utility's cash.
101. For utilities assessed as a '5' on table 20, the liquidity and reserves assessments the lower of a one-point worsening of the initial assessment or a cap of '5'. For utilities whose table 20 initial assessment results in a '6', the liquidity and



reserves assessments capped at '6'. Any other result is not impactful to the liquidity and reserves assessment.

Table 20

Contingent Liabilities Assessment						
Available Reserves/Contingent Liabilities (%)	Contingent Liabilities/Total Long-Term Debt (%)					
	<20	20 to 30	30 to 40	40 to 50	50 to 60	>60
Above 250	--	--	--	--	--	--
200 to 250	--	--	--	--	--	--
150 to 200	--	--	--	--	--	--
100 to 150	--	--	--	--	--	5
50 to 100	--	--	--	--	5	6
Below 50	--	--	--	5	6	6

## C. Assessing Debt And Liabilities

102. The analysis of a utility's indebtedness is useful for a number of reasons: it can give insight into, for example, whether the utility is in the middle of a large growth- or rehabilitation-driven capital program. It can also be closely tied to the utility's rates and capacity for additional debt, which incorporates the analysis of the capital improvement plan (CIP). For the debt and liabilities assessment, we use debt to capitalization\*.
103. The debt and liabilities assessments summarized in table 21.

Table 21

Assessment Of Debt And Liabilities	
Initial Assessment	Debt To Capitalization
1	Up to 20%
2	20% to 35%
3	35% to 50%
4	50% to 65%
5	65% to 80%
6	Greater than 80%
Qualitative Factors Positively Affecting The Initial Assessment Include:	
A relatively rapid roll-off of the long-term debt, with 65% or more coming due in 10 years or less, assuming there are no bullet maturities within that schedule that would realistically need to be refinanced. Total debt is not reduced by the presence of a debt service reserve fund.	
Qualitative Factors Negatively Affecting The Initial Assessment Include:	
Concerns about pension funding, which could be evidenced by a funded ratio of less than 80%, an actuarial study that is more than three years old, or a trend of not fully funding the annual required contribution for the pension or postemployment benefits (see paragraph 105).	

104. Given the recent emphasis on recognition and funding as on-balance sheet long-term liabilities for both pension (GASB Statements 67 and 68) and other postemployment benefits (OPEB; GASB Statement 45), consideration as to the utility's share of unfunded liabilities as measured on the balance sheet or accompanying notes will be noted. Although these obligations are debt-like in nature, they are not equivalent to debt because the magnitude and timing of the obligation are not completely certain based on factors such as actuarial assumptions, future benefit levels, and earnings of the fiduciary fund or trust. Similarly, the annual required contributions and pay-as-you-go actual cash

outlays are commonly treated as part of total personnel-related expenses if not accounted for in fiduciary funds or net transfers; these criteria focus on actual cash expended, not a noncash item such as one related to fair value reporting. Finally, the unfunded liability may lie elsewhere, as many utility employees are civil servants and therefore beneficiaries by way of the associated municipal general government's umbrella plans, rather than a utility-specific plan. If the utility is part of a larger general government rather than a stand-alone entity, we assume the utility's funded ratio is proportionally the same as that of the entire unit of government absent better information.

105. Nevertheless, unfunded or underfunded obligations can be a credit factor. The impact of pension and OPEB obligations depends on the degree to which such costs will likely escalate and whether the government has plans to address them. If the funded ratio for the largest plan in which the utility participates is not at least 80%, and if any of the following also is true, the assessment will be worsened by one point:

- The actuarial study is more than three years old, or
- The utility has a trend of not fully funding its pension ARC.

If there is no credible plan to address the obligation(s), the assessment will be worsened by two points.

## D. Assessing Financial Risk Management

106. Standard & Poor's evaluates established and ongoing management practices and policies in the seven areas under control of management that are most likely to affect credit quality. The FMA, like the OMA, ranges from (1) strong; (2) good; (3) standard; or (4) vulnerable. These areas and their weights are:

- Revenue and expense assumptions (10% of total FMA),
- Budget monitoring and interim reporting (10%),
- Long-term financial planning (15%),
- Long-term capital planning and asset management (20%),
- Investment and liquidity policies (20%),
- Debt management policies (10%),
- Transparency and accountability (15%).

107. To convert the FMA to a '1' to '6' scale, see table 22.

Table 22

Financial Management Assessment (FMA) Conversion To Six-Point Scale		
Observed Evaluation	FMA	Characterization
1.0 to 1.2	1	Strong
1.2 to 1.8	2	Good
1.8 to 2.5	3	Good
2.5 to 3.1	4	Standard
3.1 to 3.6	5	Standard
3.6 to 4.0	6	Vulnerable
Qualitative Factor Negatively Affecting The Initial Assessment		

Weak legal provisions when assigning issue credit ratings (see paragraphs 112 and 113).

108. The ability of a utility's management team to implement measures on a timely basis that will in our opinion proactively shape the utility's financial and operating condition can be crucial to maintaining credit stability. The assessment looks at the environment in which financial decisions affecting the utility occur. Generally, higher-rated entities will, over time, develop "best practices" that not only serve as guiding rules of thumb (or actual codified policies) to ensure continuity, but also ensure logical rhyme-and-reason to decisions that are made.
109. This assessment is based on a preponderance of evidence. Specifically, in our judgment are most, but not necessarily all, of the described characteristics applicable? A utility receives a neutral assessment if 'standard' for any sub-factors for which there is insufficient evidence to assign either a positive or negative assessment. However, some sub-factors may receive a negative assessment if a utility has a record of failing to disclose key relevant information.
110. By focusing on a utility's policies and practices, the FMA is not an evaluation of the competency or aptitude of individual finance professionals, nor is it an evaluation of management's ability to handle unique challenges. Moreover, the nature of the utility's governing body, the effectiveness of its governance practices, and issues of public policy involved in utility-related decisions are beyond the scope of this analysis. The FMA analyzes the environment in which financial decisions are made, including how both the ordinary and extraordinary are identified and addressed as relevant to the utility's ability to fund them and to what degree those risks are transparently reviewed and reported to ensure ongoing continuity. Financial results are assumed to manifest themselves in other visible ways and are addressed elsewhere in these criteria. The purpose of the focus on policies and practices is to evaluate the potential for credit quality to move away from that which is currently indicated by results.
111. Transparency and accountability in reporting, regardless of governance structure, is important in order to ascertain key quantitative data. States that require annual audited financial statements increase the likelihood that financial information will be available, and late audits will be noted. The use of GAAP usually enhances reporting detail and consistency across the sector, making it easier to have a sufficient uniform method of interpretation. States that allow cash accounting tolerate a lesser degree of completeness and consistency, and transparency suffers. As noted in "Alternative Financing: Disclosure Is Critical To Credit Analysis In Public Finance", published Feb. 18, 2014, a review of alternative financings and exposure to contingencies is a key component to understanding the entirety of all the risks and revenue requirements to which the utility is exposed.
112. We believe that creditor security can be weakened without a minimum set of covenants that constrain the utility's behavior. If we view the utility's legal provisions as sufficiently weak, the initial FMA would generally be worsened by one point. We believe that in the municipal utility sector those minimums generally include the below covenants and that they must exist at all times:
- A rate covenant to maintain an annual debt service coverage ratio of at least 1.0x or higher from recurring or ongoing revenues. However, where indentures permit the utility to use cash balance to achieve rate covenants, whether the cash is in the form of a rate stabilization account or other available funds, we factor the use of such funds into the ratings evaluation in accordance with paragraph 89;
  - An additional bond test that places some limits on the amount of increased leverage that will otherwise impair credit quality of the entity; and
  - Provisions establishing remedies for when a rate covenant is violated, such as a review of the current rates.

113. In addition, when the liquidity and reserves assessment for existing rated utilities is a '4' or worse, we will worsen the FMA by one point if there is no debt service reserve fund (DSRF) in an amount equivalent to at least half of the average annual debt service requirements. A DSRF typically provides immediately available supplemental liquidity in the event of pledged revenue insufficiency for the payment on the obligations then due.

- We would not recognize the utility as having a DSRF at all if it is only conditionally funded, such as a so-called "springing" DSRF. In such cases, this is, in our view, associated with conditions likely to come at a time when the utility is least able to afford additional demand on its cashflow.
- A DSRF may be satisfied with an unconditional surety policy or similar arrangements with another financial counterparty. If we believe that the counterparty would be unable to provide funding for the DSRF in a stress scenario, and the counterparty could not be easily replaced on a timely basis, we would not recognize the utility as having a DSRF.

114. The following tables detail each of the seven financial practice areas examined by the FMA.

115. The revenue and expense assumptions assessment evaluates if the organization's financial assumptions that support the annual budget and any financial forecast are realistic and well-grounded from both long-term and recent trend perspectives.

Table 23

**Revenue And Expense Assumptions Assessment**

<b>Strong</b>	Weather-normalized, formal historical trend analysis is performed and updated annually for both revenue and expenses; regular effort is made to determine whether one or more factors will cause revenues or expenses to deviate from their long-term trends over the next few years.
<b>Good</b>	Assumptions for most key line items in pro forma reports are analyzed and updated regularly, while others may assume simplistic changes over time such as linear or inflationary growth or flat from year to year.
<b>Standard</b>	Optimistic assumptions exist that, while supportable, add risk; assumptions are based on recent performance, but little evidence of questioning or validating assumptions exists.
<b>Vulnerable</b>	Assumptions neglect likely shortfalls, expense pressures, or other pending issues; assumptions lack prudent validation.

116. The evaluation of budget monitoring and interim reporting examines how, if at all, management reconciles year-to-date progress versus the budget adopted at the beginning of the fiscal year. This component evaluates if there are procedures for reviewing the budget based on updated information and actual-to-date performance to ensure fiscal targets and revenue requirements are met, and to what degree the interim reporting is disclosed.

Table 24

**Budget Monitoring And Interim Reporting Assessment**

<b>Strong</b>	At least quarterly budget surveillance is maintained to identify problem areas, which are publicly reported to the utility's governing body.
<b>Good</b>	Semiannual budget reviews exist; management identifies causes for variances between budget and actual performance and reports them to the utility's governing body.
<b>Standard</b>	A deviation from the budget is only reported because it has occurred; material variances between budget and actual performance are identified after they have occurred but not captured in projections for the remainder of the fiscal period.
<b>Vulnerable</b>	No formal process exists for regular review and timely updating of budget during the year.

117. The long-term financial planning assessment focuses on whether or not a financial forecast exists, the length of the planning horizon is, and if it includes a comprehensive identification of all reasonably likely upcoming revenue

requirements to determine how the utility will meet those revenue requirements, such as adjusting rates or implementing cost containment measures.

Table 25

Long-Term Financial Planning Assessment	
<b>Strong</b>	A regularly updated pro forma financial projection exists with a planning horizon of at least three years beyond the current budget year. The forecast includes future impacts to operating and maintenance (O&M) expenses and total financing obligations—both existing and probable—are identified. Impacts to rates or the ability to generate appropriate levels of pledged revenues through cost containment measures, for example, are clear. Planned use of designated cash reserves may occur infrequently, but structural balance is a clear goal.
<b>Good</b>	Pro forma projections exist and are comprehensive as described for a 'strong,' but are typically over a planning horizon of no more than the upcoming budget year plus one to two years into the future.
<b>Standard</b>	Multiyear projections are done but not updated until the last year of the current forecast. Multiyear projections are done, but with focus only on existing revenue requirements and exclude debt financing that is likely to be issued within the planning horizon, or ignore looming infrastructure investment needs such as growth or regulatory mandates.
<b>Vulnerable</b>	No long-term financial planning exists; O&M planning is done on a year-to-year (or budget-to-budget) basis. Near-term challenges are met with short-term fixes.

118. The asset management and long-term capital planning sub-factor assesses if a CIP exists, the length of the planning horizon, how and why projects make the list, and a summary of the most likely funding sources for the identified projects.

Table 26

Asset Management And Long-Term Planning Assessment	
<b>Strong</b>	Strategic and comprehensive planning focusing on the utility's infrastructure requirements, physical and other assets, and ability to continue to meet service levels is combined with likely sources of funding for identified projects; the plan and its priorities are regularly updated and transparently communicated. A characterization of "strong" will include planning not only the current budget year but also for at least five years beyond that.
<b>Good</b>	A comprehensive multiyear capital improvement program exists as described for a "strong" assessment but the planning horizon is less than five years.
<b>Standard</b>	The current-year capital expenditures are identified in the budget, but any future projects are currently nothing more than a wish list; a multiyear capital plan exists but funding sources are unclear or absent.
<b>Vulnerable</b>	Capital planning is done as needs arise, but no more frequently than on a year-to-year (or budget-to-budget) basis.

119. Seasonal cash flow needs, capital requirements, unbudgeted or unanticipated items, and contingency hedges all suggest at least some level of working capital cushion to be maintained. The investments and liquidity policies assessment evaluates if management has identified preferred cash reserves by way of an adopted policy or even a target. Liquidity policies and targets must be grounded in reality; these criteria would not give credit for a liquidity policy if it is set at a level so far above current or recent financial performance that we would not view it as attainable. Further, this sub-factor identifies if there are locally-adopted permitted investments guidelines, and if management reconciles and reports on its cash and investments with any regularity.



Table 27

Investment And Liquidity Policies Assessment	
<b>Strong</b>	The utility has embedded policies on the maintenance of minimum reserves, regardless of whether such reserves are deemed by management to be unrestricted or designated yet available for any lawful purpose; the policies are reflective of realistically attainable and sustainable levels. Permitted investment guidelines or policies exist, even if the utility's policies reflect or even mimic the state's policies. Reports on the utility's investment portfolio are prepared and reported to the utility's governing body at least quarterly.
<b>Good</b>	Targets for reserve levels exist by practice, are tied to meaningful levels, and are generally met or exceeded. While the utility's de facto cash management guidelines may defer to the state's permitted investment statutes, no local policy exists. The utility's management reports on its investments at least semiannually to its governing body.
<b>Standard</b>	Management has a target for a preferred level of cash reserves but it seems to be unrealistic given financial performance, or is so newly defined that it may be many years before such reserves are accumulated. Informal or nonpublished investment policies exist, are tracked by administrative staff but only irregularly or at the end of the fiscal year.
<b>Vulnerable</b>	Absence of informal reserve policies; even if they exist, they have been suspended or ignored. Weakness in cash flow adequacy has resulted in a greater appetite for risk in its investments. Investments are monitored irregularly and an external auditor deems there to be weakness or risk in cash handling and monitoring duties.

120. The debt management assessment evaluates if the utility has in place robust guidelines on the use of debt, excluding any covenant already established in its legal provisions. Examples include minimum savings thresholds for refunding bonds; stated preferences regarding final maturity, structure, and overall tenor of its debt, and the use of variable-rate debt, derivative products, floating-rate notes, or direct placement arrangements. If the debt instrument requires a financial institution counterpart, this assessment looks to any policies the utility may have regarding counterparty risk.

Table 28

Debt Management Policies Assessment	
<b>Strong</b>	Debt policies exist and are thorough and well-defined, even if they reflect or mimic state statutes. These policies are widely communicated and followed. While management has a general tendency toward risk-aversion, robust policies and sophistication among key finance officials make it likely that debt instruments that may require heightened levels of monitoring will make surprises a remote occurrence.
<b>Good</b>	Policies exist but may not address some key areas. In the absence of policies, management defers to state statutes that themselves are strong; some of the utility's financing obligations may be of the type that require a heightened level of monitoring, and management has some reliance on external consultants to help ensure remoteness of risks associated with those particular debt instruments.
<b>Standard</b>	Legal provisions and state laws are the sole guiding influences on management's use of and attitudes toward debt, or any internal guidelines are not meaningful beyond very basic or minimum debt management or are identified as unwritten goals.
<b>Vulnerable</b>	Absence of basic policies or clear evidence that basic policies are not being followed. Nontraditional financing options are utilized but there is no internalized knowledge, or utility management relies very heavily on consultants to monitor or manage the risk.

121. The transparency and accountability sub-factor assesses whether or not management has established for the independent review of important financial and operational data as well as the quality, regularity, and timeliness of its continuing disclosure practices, even for things that the utility may not be legally required to disclose. Even with annual audited financial statements produced according to GAAP, nonpublic disclosure of an alternative financing such as a direct placement arrangement would result in an assessment of 'vulnerable' for this sub-factor.

Table 29

Transparency And Accountability Assessment	
<b>Strong</b>	Management produces annual independently audited financial statements that comply with GAAP. Alternative financings and exposure to contingent risks are voluntarily disclosed as they are entered into, and overall continuing disclosure is deemed as robust and timely.
<b>Good</b>	Management produces annual independently audited financial statements that comply with GAAP. Alternative financings, exposure to contingent risks, and overall continuing disclosure are done, but generally only on an annual basis.
<b>Standard</b>	Management produces independently audited annual financial statements, but on a cash or other non-GAAP basis of presentation. Audits typically are released more than 180 days after fiscal year-end. The disclosure of alternative financings and contingent risk is not always timely but generally updated on an annual basis.
<b>Vulnerable</b>	Management produces independently audited financial statements, but cash or other non-GAAP basis of presentation is permitted. Audits typically are late or not produced each year. Regardless of frequency and quality of the audited financial statements, alternative financings and contingent risk are not voluntarily disclosed or overall continuing disclosure is poor and not timely.

## VIII. RELATED CRITERIA AND RESEARCH

### Related Criteria

- USPFCriteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- GeneralCriteria: Rating Government-Related Entities: Methodology And Assumptions, March 25, 2015
- Methodology: Master Limited Partnerships And General Partnerships, Sept. 22, 2014
- Country Risk Assessment Methodology And Assumptions, Nov. 19, 2013
- Ratings Above The Sovereign: Corporate And Government Ratings—Methodology And Assumptions, Nov. 19, 2013
- Key Credit Factors For The Regulated Utilities Industry, Nov. 19, 2013
- Corporate Methodology, Nov. 19, 2013
- GeneralCriteria: Methodology: Industry Risk, Nov. 20, 2013
- Timeliness Of Payments: Grace Periods, Guarantees And Use Of 'D' And 'SD' Ratings, Oct. 24, 2013.
- Local Government GO Ratings Methodology And Assumptions, Sept. 12, 2013.
- Criteria For Assigning 'CCC+', 'CCC', 'CCC-', And 'CC' Ratings, Oct. 1, 2012
- Contingent Liquidity Risks In U.S. Public Finance Instruments: Methodology And Assumptions, March 5, 2012
- Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- Methodology: Rating Approach To Obligations With Multiple Revenue Streams, Nov. 29, 2011
- Principles Of Credit Ratings, Feb. 16, 2011
- Stand-Alone Credit Profiles: One Component Of A Rating, Oct. 1, 2010
- Use Of Credit Watch And Outlooks, Sept. 14, 2009
- Rating Implications Of Exchange Offers And Similar Restructurings, May 12, 2009.
- Appropriation-Backed Obligations, June 13, 2007.
- Wholesale Utilities, May 24, 2005

### Related Research

- RFC Process Summary: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- Credit FAQ: An Overview Of Standard & Poor's Updated Methodology For Rating U.S. Public Finance Waterworks, Sanitary Sewer, And Drainage Utility Systems, Jan. 19, 2016
- Credit Rating Model: Water/Sewer Credit Scoring, Jan. 19, 2016
- Credit FAQ: All-In Coverage, Transfer Payments, And Credit Quality, Jan. 19, 2016
- Affordability As A Component Of U.S. Water And Sewer Utility Ratings, Jan. 19, 2016



- Management's Key For U.S. Water Utilities To Align Operations And Finances, Jan. 19, 2016
- The Broad And Diverse Economy Adjustment: 2015 Updated Scores For U.S. Metropolitan Statistical Areas Based On Local Government GO Criteria, Dec. 15, 2015
- 2014 Annual U.S. Public Finance Default Study And Rating Transitions, May 5, 2015
- Alternative Financing: Disclosures Critical To Credit Analysis In Public Finance, Feb. 18, 2014
- Credit FAQ: U.S. Public Finance Ratings And Criteria For Ratings Above The Sovereign, Dec. 19, 2013
- U.S. Public Finance Rating Characteristics, March 7, 2008

## IX. Appendix I: Glossary Of Key Terms

In our criteria, "utility" refers to a municipally-owned utility or other legally authorized political subdivision that provides raw and/or potable water, sanitary sewer, and/or drainage services at the retail level, or with wholesale (sales for resale) service not more than 49% of total operating revenues. The utility is most often, but not always, an enterprise within a larger general government, or an independent utility with its own governing board.

"Sewer", "sanitary sewer", and "wastewater" are used as interchangeable terms.

"Drainage", "stormwater", and "storm sewer" are used as interchangeable terms.

The following terms are based on the definitions provided in the article "Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations," published on Nov. 29, 2011:

### Other terms

*Annual required contribution:* The actuarially calculated amount that the utility (or its sponsoring plan provider) must make to completely fund its next associated payment on its pension and/or OPEB liability.

*Available reserves:* Unrestricted cash and equivalents plus any working capital that resides on the utility's balance sheet and is lawfully available for any purpose plus any undrawn capacity under committed lines of credit. Examples include emergency and contingency funds, rate stabilization reserves and other cash that may be designated in purpose but not restricted for debt service, fiduciary purposes, or asset retirement obligations.

*Contingent liabilities:* Variable-rate demand bonds, commercial paper, bullet payments due within five years, bonds with mandatory tender dates in five years or less, direct bank debt with acceleration clauses, the potential for a wholesale provider to reallocate its costs to the utility in an unbudgeted or otherwise unpredictable manner or the obligation is not based on an availability payment structure, swap or related termination payments if the current rating is two notches or less from the termination trigger, and other identifiable contingencies.

*Days' cash:* A measure of cash, investments and equivalents, calculated as follows:

**Numerator:** All unrestricted cash and equivalents plus any reserves that are designated, but ultimately available for any lawful purpose. May include long-term investments so long as they also have no restrictions and are not illiquid.

**Denominator:** 1/365th of income statement operating expenses. For operating expenses, depreciation, amortization, and other non-cash items, such as those that update a fair value on a derivative or pension obligation, are excluded. Transfers are included in operating expenses.

*Debt to capitalization:* A measure of the relative leverage of the utility, as follows:

**Numerator:** The sum total of all short- and long-term debt both on the utility's balance sheet and that which is allocable to the utility, including draws on credit lines, commercial paper notes and other loans, debt or material obligations even if not rated by Standard & Poor's.

**Denominator:** The total debt as calculated in the numerator plus the utility's net position, which we view as public sector accounting's closest approximation of equity.

*Dependent population:* The total population of the service area that is younger than 15 years old plus the total population of the same area older than 65 years old.

*GAAP:* Generally accepted accounting principles are the common set of accounting principles, standards, and procedures that most governments and utilities in the U.S. follow. GAAP is determined by the Governmental Accounting Standards Board.

*Nonrevenue water:* As defined by the American Water Works Assn., the sum total of leaks, water that is incorrectly billed (whether because of an inaccurate meter or human error), theft, unbilled, and unmetered water such as that which is used for fire protection or line flushing, and unbilled but metered water such as water provided to schools or churches that because of local policy is provided free of charge.

*Off-balance sheet:* An obligation for which the utility is legally responsible, but which may appear only in the rated utility's financial statement notes, or another entity's balance sheet, but not within the long-term debt of the rated utility itself.

*Other postemployment benefits:* Health care, along with dental, vision, disability, long-term care, and life insurance benefits offered to qualified retirees of the utility.

*Self-supporting debt:* Debt is considered self-supported if the debt issued by the affiliated unit of government on behalf of the utility--such as a city issuing GO or special tax to fund projects for the betterment of its water system--is fully paid by practice from the utility's surplus net revenues. Full self-support means surplus net revenues must be at least as large as the principal and interest payments then due on that tax-secured debt.

*Tax-secured debt:* Debt that is secured by a full faith and credit general obligation pledge (whereby revenues are commonly derived by the levy of a property tax) or special tax--such as a local option sales tax or parcel tax.

## X. Appendix II: Municipal Rating Calibration

122. We calibrate our utility rating criteria based on our analysis of the history of defaults, the impact of changes in regulatory mandates over time, our view of the industry's essentiality, the industry's sensitivity to economic cycles, and the credit strength of this sector compared with that of other sectors.
123. Municipally-owned utilities and utility authorities are the monopolistic provider--naturally and often statutorily--of services to their defined customer base. We generally view them as having a business profile that is low in risk and does not stray from its core business of providing retail waterworks and/or sanitary sewer services. We have seen that the local decision-making body, such as the city council or utility board, is usually the one entity solely responsible for approving and implementing rate adjustments, as only a few states require municipal rates to be approved by a utility

regulatory body such as a public service commission. We do not view rate regulation as an impediment to credit quality unless there is clear evidence otherwise as measured by the timeliness and magnitude of requested versus approved rate cases. Municipal utilities, in our view, tend to operate on a cost recovery basis, not a rate-of-return model; any kind of return on investment usually comes in the form of a transfer payment to the general government, not a dividend derived from a profit margin.

124. Defaults and bankruptcy filings among U.S. municipal utilities are extremely rare. Of the 73 nonhousing defaults from 1986 through 2014 among all U.S. public finance issuers, only three (4%) were utilities. While rare, we observed that these defaults were associated with credit-specific characteristics such as weak financial management or a deterioration in the local utility or local government's financial condition, which are the most common indicators of distress.
125. Within U.S. public finance, water and sewer utilities currently comprise about 7% of Standard & Poor's total ratings. The federal courts' own data note, "In the more than 60 years since Congress established a federal mechanism for the resolution of municipal debts, there have been fewer than 500 municipal bankruptcy petitions filed." The vast majority of these were real estate-related special districts, sanitation entities, or industrial development authorities. The EPA's statistics show that there are over 50,000 community water systems in the U.S., about 85% of which are publicly owned. Therefore, we believe U.S. municipal utility defaults are infrequent. We do not expect a change in the historically extraordinarily low default rate in this sector. When there is a rapid deterioration, we do expect to continue to see multi-notch downgrades. Please see "The Time Dimension Of Standard & Poor's Credit Ratings", published Sept. 22, 2010, for a description of potential ratings migration.
126. This assumption is further supported by research, cited in "Local Government GO Ratings Methodology And Assumptions", published Sept. 12, 2013, that the broader historical rate of municipal defaults, dating back over a century in works by Hempel, Hillhouse et al, is extremely low.
127. While generally not rate-regulated, the U.S. municipal utility sector is still highly regulated. Water and sewer utilities are required to comply with numerous environmental regulatory standards at the federal and state levels to ensure public health and safety. The high level of regulation is, in our view, indicative of a public perception that utilities have an essential purpose. The regulatory framework, capital-intensive nature of utilities, and monopolistic nature preclude competition. However, this does not guarantee financial or operational performance. Failure to meet regulatory or environmental compliance could have larger implications and possibly impair credit quality. Our ratings are calibrated to seek a balance between our view that the sector is essential and the fact that each utility is not guaranteed to perform at a certain level.
128. The utility sector, in general, tends to have less susceptibility than other sectors to economic cycles due to the relatively price-inelastic nature of water and belief that sewer service is necessary for public health. We have observed that utilities derive nearly the entirety of operating revenues from local user charges and therefore are not beholden to flat growth in property tax bases or even year-over-year declines in local option sales tax revenues or cuts in state-shared programs. Operating revenues flow directly to the utility, not first to the sovereign central government (the U.S. federal government) or state government, and utility managers enjoy significant revenue, expense, and overall budgetary autonomy. Some local service areas have a principal utility customer that is also a key local or

regional employer, and the utility's financial health may sometimes rise or fall with the prospects of that employer. However, as measured by the number of metered accounts, most utility systems are disproportionately residential in nature, which often tends to create diversity among operating revenues regardless of where in a cycle the local economy is.

## **XI. Appendix III: An Overview Of The History Of Municipal Water Consumption And Billing In The U.S.**

129. Local and regional water conservation programs--both voluntary and mandatory--have for decades succeeded in reducing per capita per day consumptive use, especially in the South and West. Even the federal government, with the Energy Policy Act of 1992, established water-efficient standards for all indoor plumbing fixtures manufactured after 1994 (Section 123, Energy Policy Act of 1992. Public Law 102-486, 102nd Congress. Washington, D.C., Oct. 24, 1992). There is therefore no broadly applicable direct correlation between economic growth and system demands. However, economic fundamentals are still a critical proxy for the current and likely future ability of the customer base to support utility operations and its revenue requirements, as municipal utilities tend to derive nearly all operating revenues from the local rate base.
130. Regardless of the condition of the utility's service area economy, the relative ability of its customer base to pay the utility bill has remained important not only to credit quality but also to the sector itself. Both the EPA and the water utility industry's leading professional organization, the American Water Works Assn. (AWWA) have developed guidelines for measuring affordability.
131. AWWA's "Principles of Water Rates, Fees and Charges: Manual M-1 of Water Supply Practices (6th Edition, 2012)", often cited by the municipal utility industry as the definitive guide for rate studies, notes: "Unfortunately, it is neither economically practical nor often possible to determine the cost responsibility and applicable rates for each individual customer served" (page 75). For utilities, then, AWWA notes that the household is the base unit of measurement for virtually every component of a water utility, such as billing, pumping, water supply and capacity factors. The EPA also uses household, not per capita, income for measuring rate affordability.
132. As first discussed in section 1416(a)(1) of Public Law 93-523, commonly known as the Safe Drinking Water Act of 1974, a state which has primary enforcement powers may grant water systems an exemption from the SDWA "due to compelling factors (which may include economic factors)" The exemptions are not permanent and require the utility to demonstrate that it is unable to make the improvements to meet any such applicable regulatory requirements within a certain timeline and/or the service area is economically disadvantaged.
133. Such exemptions were more fully developed by the federal government with the 1986 and 1996 amendments to the SDWA. Around this same time, the EPA also developed its Interim Economic Guidance for Water Quality Standards Workbook, (EPA 823-B-95-002, March 1995), specifically section 4, and Combined Sewer Overflows--Guidance for Financial Capability Assessment and Schedule Development (EPA 832-B-97-004, February 1997), specifically section 3, to develop affordability criteria for sewer systems, including the residential indicator, which measures the annual utility burden as a percentage of median household income, and a number of additional secondary screening criteria

such as the local unemployment rate versus the national rate.

134. Because these affordability measures are generally accepted and used throughout the industry—even as we acknowledge they are only guidelines and targets—they are also used in our criteria. This methodology, however, is based on median household effective buying income since it better captures after-tax, disposable income, or take-home pay. EPA's secondary screening affordability criteria also take into account the household tax burden (Combined Sewer Overflows--Guidance for Financial Capability Assessment and Schedule Development (EPA 832-B-97-004; February 1997, pp. 32-36), so we view the approach as consistent.
135. It is common practice in the U.S. to measure retail billing units in volumes based either on per 1,000 gallons of water or per hundred cubic feet (ccf). Eight ccf's are equal to 5,984 gallons, or about 6,000 gallons. However, it is currently uncommon for a utility to measure billings in increments of per 500 gallons, so these criteria also round up to the closest equivalent.
136. Regardless of the unit of measurement used by the utility for billing purposes, it is common for there to be some variance between how much water the utility pumps into the system and how much actually gets billed. Most often this is due to leaks in the distribution or storage infrastructure, as well as aged or malfunctioning meters that underrepresent the actual volume of water used by that account. By the time the water leaves the treatment plant, the utility has incurred all the costs associated with that water, such as rights for the raw-water source and the treatment, transmission, and distribution expenses. The AWWA (as defined in its M-36 manual) uses an array of water resources as well as operational and performance indicators. Taken into account are both the volume of the losses and their cost impact. AWWA has stated that the most useful performance indicator for financial purposes is the nonrevenue water, with a financial measure characterized as the cost impact of all losses divided by total system operating costs. Standard & Poor's criteria uses as evidence nonrevenue water volume and cost, the quality and frequency of water system audits, and anecdotal evidence from management.
137. Utility billings and financial metrics can and often do vary from year to year for a variety of reasons, with the most common examples being:
- Weather—temperatures and precipitation patterns can cause a pronounced variance to annual usage and revenue in either a favorable or unfavorable direction, and no widely accepted normalizer exists in the sector, such as heating or cooling degree days in the electric sector;
  - Debt service schedule—utility's debt service payments are not always the same from year to year, and can and often do change very significantly into the future; and
  - Infrastructure investment requirements—capital spending needs, whether for growth, rehabilitation, or regulatory mandates, or to address short-term emergencies.

## **XII. Appendix IV: An Overview Of Irrigation Districts**

138. Irrigation districts are special districts that share a broad range of common features with other rated water districts; however, certain credit characteristics are materially different and therefore affect our evaluation of credit quality. In contrast to water utilities that primarily provide water for municipal and industrial uses, irrigation districts often have operations that are limited to the production and distribution of water supply for agricultural purposes. Customers of

these districts are predominantly farms of varying size for which the cost of water supply is one input into the production of agricultural goods ranging from cotton to almonds. In this context, the service area's income levels and unemployment rates are less meaningful, and we focus more broadly on the fact that the customer base is concentrated in a single industry--agriculture--that can be susceptible to unique risks such as poor weather conditions such as drought and frost, or pests, which may materially affect the ability of customers to pay their bills timely and in full.

139. Operationally, irrigation districts often provide a supplemental source of supply rather than a primary source of supply for customers. District activity typically focuses on the distribution of raw water with no treatment required since water is utilized by customers for agricultural production rather than potable consumption. Many, although not all, farms have private groundwater wells that serve as a source of supply, and the cost of water from this source is typically calculated based on the depth to groundwater in the aquifer, the electricity cost to operate pumps to produce the lift required to extract groundwater, and a nominal allocation of maintenance expense for the pumps. We believe that the availability of an inexpensive alternative water supply materially constrains an irrigation district's revenue raising flexibility since in the short term we anticipate that businesses will select the lowest cost of supply all else equal. Also, while irrigation districts often have some of the oldest established water rights to a given surface water source, others depend on contractual rights or permanent water rights to supply from large scale water projects--such as the U.S. Bureau of Reclamation's Central Valley Project or the California State Water Project--that may be subject to allocation methodologies that prioritize supply for municipal uses over agricultural uses due to public health concerns.
140. We have observed that limitations on sources of supply during drought periods may result in volatile debt service coverage patterns, including periods of insufficiency, that are generally inconsistent with the vast majority of rated water utilities and we view as a material credit weakness for this portion of the sector. Furthermore, while capital needs for irrigation districts are often limited to renewal and replacement of existing infrastructure, we have observed that irrigation districts may have unexpected and sizable capital needs for the acquisition of additional water rights or development of water banking capabilities--either internal capability development or participation in an external water bank--that make it very difficult to predict future capital spending patterns.

These criteria represent the specific application of fundamental principles that define credit risk and ratings opinions. Their use is determined by issuer- or issue-specific attributes as well as Standard & Poor's Ratings Services' assessment of the credit and, if applicable, structural risks for a given issuer or issuer rating. Methodology and assumptions may change from time to time as a result of market and economic conditions, issuer- or issue-specific factors, or new empirical evidence that would affect our credit judgment.



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**Cc:** clek@sco.ca.gov[clek@sco.ca.gov]; eloste@sco.ca.gov[eloste@sco.ca.gov]  
**From:** Bobbie Ormonde  
**Sent:** Wed 10/5/2016 10:53:33 PM  
**Subject:** RE: Westlands Review

Michael,

Dan Pope, Westlands’ Chief Operating Officer, and I just left you a message regarding the Westlands Review. When you are back in the office, please call me. We have a few questions regarding the review and we can discuss scheduling the review.

Also, will the State Controller’s Office be sending a written notification to the District regarding this matter?

Bobbie Ormonde  
Director of Finance and Administration  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 93703-6056  
(559) 241-6203

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**From:** MCheng@sco.ca.gov [mailto:MCheng@sco.ca.gov]  
**Sent:** Monday, October 3, 2016 11:44 AM  
**To:** bormonde@westlandswater.org  
**Cc:** CLek@sco.ca.gov; ELoste@sco.ca.gov  
**Subject:** Westlands Review

Hi Bobbie,

This is Michael, the auditor from the State Controller’s Office. This is a follow-up email regarding the scheduling of an internal control review of the Westlands Water District. I CC’ed my managers.

As discussed over the phone, we might be able to start near the end of October. Let me know when we can finalize the date. We anticipate completing the fieldwork in approximately six to eight weeks.

Our review will include an analysis of the administrative and internal accounting controls and fiscal management of the district and will focus on the period of March 1, 2013, through February 28, 2015; however, if issues come to our attention, we may expand our work to include prior and/or current periods.

The review will be conducted under the Government Code section 12410 which requires the Controller to “. . . superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.”

Additionally, Government Code section 12891.2 grants the Controller the authority to audit the books and records of public agencies receiving loans or grants for local water projects.

Please contact me if you have any questions. We look forward to working with you.

Thanks,  
**Michael Cheng, CPA**  
Audit Specialist  
State Controller’s Office  
Division of Audits - Local Government Audits Bureau  
(916) 322-5235 | [mcheng@sco.ca.gov](mailto:mcheng@sco.ca.gov)

**To:** dciapponi@westlandswater.org[dciapponi@westlandswater.org]  
**Cc:** Kawawaki, Lauren[lauren.kawawaki@standardandpoors.com]; Weil, Chloe[chloe.weil@standardandpoors.com]  
**From:** S&P\_USPF\_RatingLetters@standardandpoors.com  
**Sent:** Tue 3/15/2016 10:32:31 AM  
**Subject:** S&P Rating Letter & Report - CA, Westland's Water District  
[Westlands Water District STDLONG 797139.pdf](#)  
[Westlands Water District STDLONG A+ 797139.pdf](#)  
[Westlands Water District SPUR 797139.pdf](#)  
[CA, Westlands Wtr Dist Rationale 797139.pdf](#)

Dear Mr. Ciapponi,

Please find attached the rating letter and report for the transaction reflected above.

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One California Street, 31st Floor  
San Francisco, CA 94111-5432  
tel 415 371-5000  
reference no.: 40098960

March 14, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Dave Ciapponi, Assistant General Manager

Re: *Westlands Water District, California, Certificate Of Participation*

Dear Mr. Ciapponi:

Standard & Poor's Ratings Services ("Ratings Services") hereby affirms its rating of "A+" for the above-referenced obligations and placed the rating on CreditWatch with negative implications. A copy of the rationale supporting the rating and CreditWatch is enclosed.

This letter constitutes Ratings Services' permission for you to disseminate the above rating to interested parties in accordance with applicable laws and regulations. However, permission for such dissemination (other than to professional advisors bound by appropriate confidentiality arrangements) will become effective only after we have released the rating on [standardandpoors.com](http://standardandpoors.com). Any dissemination on any Website by you or your agents shall include the full analysis for the rating, including any updates, where applicable.

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Sincerely yours,

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March 14, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Dave Ciapponi, Assistant General Manager

Re: *Westlands Water District, California, Certificate Of Participation*

Dear Mr. Ciapponi:

Standard & Poor's Ratings Services ("Ratings Services") hereby affirms its rating of "A+" for the underlying rating (SPUR) on the above-listed obligations and placed the rating on CreditWatch with negative implications. A copy of the rationale supporting the rating and CreditWatch is enclosed.

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## Summary:

San Luis & Delta-Mendota Water  
Authority, California  
Westlands Water District; Joint  
Criteria; Water/Sewer

### Primary Credit Analyst:

Chloe S Weil, San Francisco (1) 415-371-5026; [chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)

### Secondary Contact:

James M Breeding, Dallas (1) 214-871-1407; [james.breeding@standardandpoors.com](mailto:james.breeding@standardandpoors.com)

## Table Of Contents

Rationale

Related Criteria And Research

## Summary:

# San Luis & Delta-Mendota Water Authority, California

## Westlands Water District; Joint Criteria; Water/Sewer

Credit Profile		
WestlandsWtr Dist (WestlandsWtr Dist) JOINTCRIT		
LongTermRating	AAA/A-1/Watch Neg	Current
UnenhancedRating	A+(SPUR)/Watch Neg	On CreditWatch Negative
Westlands Wtr Dist wtr & swr		
UnenhancedRating	A+(SPUR)/Watch Neg	On CreditWatch Negative

## Rationale

Standard & Poor's Rating Services placed the following ratings on CreditWatch with negative implications:

- 'A+' long-term rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes; and
- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs).

The CreditWatch placements follow the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Securities Exchange Commission (SEC) with the district, which charged key management staff with misleading investors about the district's financial condition. Prior to the SEC's action, Standard & Poor's was not aware of the district's extraordinary accounting transactions that were the subject of the proceeding.

Resolution of the CreditWatch placement is dependent on our ability to obtain timely information of satisfactory quality to maintain our rating on the securities in accordance with our applicable criteria and policies. Failure to receive the requested information by March 25, 2016 will likely result in our suspension of the affected rating, preceded, in accordance with our policies, by any change to the rating that we consider appropriate given available information.

## Related Criteria And Research

### Related Criteria

USPFCriteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016



USPFCriteria: Methodology: Definitions And RelatedAnalytic PracticesFor CovenantAnd PaymentProvisionsIn  
U.S.Public FinanceRevenueObligations, Nov. 29, 2011

USPFCriteria: AssigningIssueCredit RatingsOf Operating Entities, May 20, 2015

Criteria: Use of CreditWatch And Outlooks, Sept. 14, 2009

Ratings Detail (As Of March 14, 2016)		
WestlandsWtr Dist wtr & swr (AGM)		
<i>Unenhanced</i> Rating	A+(SPUR)/Watch Neg	On CreditWatch Negative
Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced</i> Rating	A+(SPUR)/Watch Neg	On CreditWatch Negative
San Luis & Delta-Mendota Wtr Auth, California		
WestlandsWtr Dist, California		
SanLuis & Delta-Mendota Wtr Auth (WestlandsWtr Dist) (BAM)		
<i>Unenhanced</i> Rating	A+(SPUR)/Watch Neg	On CreditWatch Negative

Many issuesare enhancedby bond insurance.

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One California Street, 31st Floor  
San Francisco, CA 94111-5432  
tel 415 371-5000  
reference no.: 40225135

March 14, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Dave Ciapponi, Assistant General Manager

Re: *Westlands Water District, California, Joint Criteria*

Dear Mr. Ciapponi:

Standard & Poor's Ratings Services ("Ratings Services") hereby affirms its rating of "AAA/A-1" for the above-referenced obligations and placed the rating on CreditWatch with negative implications. A copy of the rationale supporting the rating and CreditWatch is enclosed.

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**To:** 'Bobbie Ormonde'[bormonde@westlandswater.org]  
**From:** Dave Ciapponi  
**Sent:** Tue 3/29/2016 4:27:44 PM  
**Subject:** FW: S&P Rating Letter & Report - CA, Westlands Water District  
[Westlands Water District STDLONG 797680.pdf](#)  
[Westlands Water District STDLONG AAA A-1 797680.pdf](#)  
[Westlands Water District SPUR 797680.pdf](#)  
[CA, Westlands Wtr Dist Rationale 797680.pdf](#)

FYI

*Dave Ciapponi*  
*Secretary*  
*Westlands Water District*  
*559.241.6202 Office*  
 *Cell*  
*dciapponi@westlandswater.org*

---

**From:** S&P\_USPF\_RatingLetters@standardandpoors.com [mailto:S&P\_USPF\_RatingLetters@standardandpoors.com]  
**Sent:** Tuesday, March 29, 2016 3:50 AM  
**To:** dciapponi@westlandswater.org  
**Cc:** Kawawaki, Lauren; Weil, Chloe  
**Subject:** S&P Rating Letter & Report - CA, Westlands Water District

Dear Mr. Ciapponi,

Please find attached the rating letter and report for the transaction reflected above.

Should you have any questions regarding the rating or contents of the report, please contact the primary analyst listed in the report. If you need any further assistance, please don't hesitate to contact Lauren Kawawaki at [lauren.kawawaki@standardandpoors.com](mailto:lauren.kawawaki@standardandpoors.com) or 415-371-5014

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One California Street, 31st Floor  
San Francisco, CA 94111-5432  
tel 415 371-5000  
reference no.: 40225135

March 25, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Dave Ciapponi, Assistant General Manager

Re: *Westlands Water District, California, Certificate Of Participation*

Dear Mr. Ciapponi:

Standard & Poor's Ratings Services ("Ratings Services") hereby affirms its rating of "AAA/A-1" for the above-referenced obligations and removed the rating from CreditWatch. Standard & Poor's views the outlook for this rating as not meaningful. A copy of the rationale supporting the rating and outlook is enclosed.

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Please send hard copies to:  
Standard & Poor's Ratings Services  
Public Finance Department

55 Water Street  
New York, NY 10041-0003

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Sincerely yours,

A handwritten signature in black ink that reads "Standard & Poor's". The signature is written in a cursive, flowing style. It is set against a light green rectangular background that has a subtle dotted pattern.

Standard & Poor's Ratings Services

jk  
enclosure

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## Summary:

Westlands Water District, California  
San Luis & Delta-Mendota Water  
Authority; Joint Criteria; Water/Sewer

### Primary Credit Analyst:

Chloe S Weil, San Francisco (1) 415-371-5026; [chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)

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Paul J Dyson, San Francisco (1) 415-371-5079; [paul.dyson@standardandpoors.com](mailto:paul.dyson@standardandpoors.com)

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## Summary:

# Westlands Water District, California San Luis & Delta-Mendota Water Authority; Joint Criteria; Water/Sewer

Credit Profile		
<b>Westlands Wtr Dist wtr &amp; swr</b>		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
<b>San Luis &amp; Delta-Mendota Wtr Auth, California</b>		
Westlands Wtr Dist, California		
San Luis & Delta-Mendota Wtr Auth (Westlands Wtr Dist) (BAM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

## Rationale

Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs); and
- 'A+' rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, of which Westlands Water District is the guarantor.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Securities and Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1.0x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's extraordinary accounting transaction that were the subject of the proceedings. Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as "vulnerable" and will continue to monitor the district's continuing disclosure practices. However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We believe the district's current financial position remains comparable to that of its peers at the current

rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon.

The ratings further reflect our assessment of the district's:

- Strong market position as the sole provider of irrigation water in a diverse agricultural area;
- Revised rate structure that enhances revenue stability despite significant increases in supplemental water supply costs and fluctuations in water deliveries from the U.S. Bureau of Reclamation's Central Valley Project (CVP);
- Significant progress on the decades-long dispute with the Bureau of Reclamation regarding drainage-impaired soils in the service territory, although the legal settlement remains subject to congressional approval; and
- Future challenges associated with the procurement of additional raw water sources over the long-term horizon.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The valley has been farmed with irrigation water in varying degrees for approximately half a century, and could not exist on its current scale without major water infrastructure programs such as the CVP. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable, and produces high-value permanent crops, such as almonds and pistachios, as well as tomatoes, grapes, and cantaloupes. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

Water sales and purchased water costs are the district's primary revenue sources and expenses. The main water source comes from a 1.195 million acre-foot contract entitlement with the U.S. Bureau of Reclamation's CVP. The district serves as the leading provider of imported water to the region. Supply mix can vary significantly from year to year based on CVP allocations, which are driven by hydrology. The annual safe yield of the confined underground aquifer adds another 200,000 acre-feet and local farmers generally extract as much groundwater as possible, but CVP allocations and groundwater supplies have long been inadequate to meet the region's water demand, which is approximately 1.2 million acre-feet. Accordingly, the district is continually engaged in efforts to supplement its water supply from outside sources. In recent years, the district has provided between one-half and two-thirds of all water consumed in the service area through higher-cost supplemental purchases.

As the district's financial performance is hydrology-dependent, the district performs robust financial forecasting and is proactive in maintaining relationships with other water districts and key stakeholders to ensure adequate water transfers, and to that end has been adept at securing regulatory approvals to receive supplemental water.

Weather-normalized, formal historic trend analysis is performed and updated annually for both revenue and expenses; and we believe regular efforts are made to determine whether one or more factors will cause revenues or expenses to deviate from their long-term trends over the next few years. In addition, beginning in fiscal year 2011, to help alleviate the burden on water users for the increased cost of water in short water supply years, the district's board elected to collect half of the operations & maintenance charges through a land-based charge to landowners rather than through the water rate.

On Sept. 15, 2015, the U.S. Department of Justice and Westlands approved a settlement ending a decades-long dispute over the Bureau of Reclamation's responsibility to provide drainage for the farmland within Westlands. The drainage



settlement requires Westlands to assume full responsibility for drainage management within its boundaries, and will cap CVP deliveries at 75% of the district's contract entitlement. Furthermore, Westlands will be required to retire a minimum of 100,000 acres of land and to repurpose the non-irrigated lands for environmentally friendly uses. We view the settlement as manageable as the district has already acquired 90,000 acres of land for this purpose. The district also has over \$40 million in designated reserves that could be used to meet the remaining requirements under the settlement.

The district's financial performance has been sound in our view over the past five years, despite the impact of the ongoing drought on the district's water supply. Senior lien debt service coverage (DSC) improved to 2.1x in fiscal 2015 from 1.8x in fiscal 2014, while all-in DSC, which adjusts for the district's fixed charges included in operating expenses, the district's subordinated lien obligations, and the impact of one-time land sales on revenues, improved to 1.6x from 1.2x, which we consider good. Based on unaudited results, we expect all-in DSC in fiscal 2016 to remain strong, at about 1.7x, excluding one-time land sales. Based on management's forecast, we expect all-in DSC to decline to about 1.0x in fiscal 2017, which we consider adequate at the current rating level. With a debt-to-capitalization ratio of about 55% as of February 28, 2015, we consider the district to be moderately leveraged.

The district's liquidity position is strong, in our view. The district's cash and cash equivalents as of Feb. 29, 2016 (unaudited) was \$102 million, which represented 314 days' of operating expenses. We understand that the district maintains a strong liquidity position, in part to enable it to opportunistically acquire water rights or otherwise firm up its water supply.

The proposed California WaterFix (the revised approach to the Bay Delta Conservation Plan), a comprehensive plan for the Bay-Delta to address environmental and water supply issues, if adopted and implemented, would entail substantial infrastructure investment in the Delta and implementation of other conservation measures. The capital costs associated with this project will likely be large--most recently estimated at \$14.6 billion, and the district estimates that its proportionate share would be about \$2.4 billion. However, we recognize that the method for financing the project has not been established, and the district has no obligation to fund these future costs. However, we believe that substantial increases in the district's land-based charges and CVP water rates will be necessary to cover the district's (yet to be determined) share of the planned Bay Delta improvements. Even so, we believe that the CVP water may remain the district's lowest cost source of water, and is critical to support the region's agricultural output.

## Outlook

The stable outlook reflects our view of the district's competitive position as the leading provider of supplemental water to a region with strong water demand and scarce water resources. During the two-year outlook period, we anticipate that the district will continue to sustain its good coverage metrics and extremely strong liquidity position while managing its water supply. We also expect the district to finalize its plans regarding the drainage settlement and that the district currently has ample capital funding capacity to execute the requirements under the agreement.

### Upside scenario

Although not anticipated, due to the district's service territory characteristics and potential shifts in the water supply portfolio, we may raise the ratings if the district is able to stabilize and sustain strong coverage metrics and if the local

service economy strengthens and diversifies such that its characteristics are comparable to those of peers at a higher rating level.

#### Downside scenario

We may lower the ratings if changes to the water supply portfolio or unexpected capital needs cause the district's financial metrics to materially erode.

## Related Criteria And Research

#### Related Criteria

- USPFCriteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- USPFCriteria: Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- USPFCriteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- Criteria: Use of CreditWatch And Outlooks, Sept. 14, 2009

#### Related Research

- U.S. State And Local Government Credit Conditions Forecast, Jan. 11, 2016
- U.S. Municipal Water And Sewer Utilities 2014 Sector Outlook: Learning To Do More With Less, Jan. 9, 2014

Ratings Detail (As Of March 28, 2016)		
Westlands Wtr Dist wtr & swr (AGM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
Westlands Wtr Dist (Westlands Wtr Dist) JOINTCRIT		
<i>Long Term Rating</i>	AAA/A-1	Current
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

Many issues are enhanced by bond insurance.

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of Ratings Direct at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

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reference no.: 40098960

March 25, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Dave Ciapponi, Assistant General Manager

Re: *Westlands Water District, California, Certificate Of Participation*

Dear Mr. Ciapponi:

Standard & Poor's Ratings Services ("Ratings Services") hereby affirms its rating of "A+" for the above-referenced obligations and removed the rating from CreditWatch. Standard & Poor's views the outlook for this rating as stable. A copy of the rationale supporting the rating and outlook is enclosed.

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March 25, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Dave Ciapponi, Assistant General Manager

Re: *Westlands Water District, California, Certificate Of Participation*

Dear Mr. Ciapponi:

Standard & Poor's Ratings Services ("Ratings Services") hereby affirms its rating of "A+" for the underlying rating (SPUR) on the above-listed obligations and removed the rating from CreditWatch. Standard & Poor's views the outlook for this rating as stable. A copy of the rationale supporting the rating and outlook is enclosed.

This letter constitutes Ratings Services' permission for you to disseminate the above rating to interested parties in accordance with applicable laws and regulations. However, permission for such dissemination (other than to professional advisors bound by appropriate confidentiality arrangements) will become effective only after we have released the rating on [standardandpoors.com](http://standardandpoors.com). Any dissemination on any Website by you or your agents shall include the full analysis for the rating, including any updates, where applicable.

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**To:** Bobbie Ormonde[bormonde@westlandswater.org]  
**From:** Weil, Chloe  
**Sent:** Mon 3/14/2016 10:05:23 PM  
**Subject:** RE: S&P Review of Westlands Water District  
[S&P Credit Watch Westlands 3-14-16.pdf](#)

Good afternoon—

As I mentioned on Friday, we placed the district on credit watch, pending the review, with a goal to complete the review by March 25<sup>th</sup>. I am attaching a copy of the rating action for your information.

Also, can you let me know the names of all of the attendees for the meeting on Friday? We will need to provide to our building security.

Thank you, we appreciate your time gathering the data for our review.

Best,  
Chloe



**Chloe Weil**  
Director, U.S. Public Finance Infrastructure Group

Standard & Poor's Ratings Services  
One California Street, 31<sup>st</sup> Floor, San Francisco, CA 94111  
T 415.371.5026 | F 415.371.5090  
[chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)  
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**From:** Bobbie Ormonde [mailto:bormonde@westlandswater.org]  
**Sent:** Friday, March 11, 2016 9:22 AM  
**To:** Weil, Chloe (Analytical)  
**Subject:** RE: S&P Review of Westlands Water District

Chloe,

We are in the process of gathering the data requested. As for the date of our meeting, I am awaiting availability of a few members of our team. I will get back to you today.

Bobbie Ormonde  
Director of Finance and Administration  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 93703  
(559) 241-6203

---

**From:** Weil, Chloe [mailto:[chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)]  
**Sent:** Thursday, March 10, 2016 6:23 PM  
**To:** Brown, Douglas S.; Bobbie Ormonde  
**Cc:** Dyson, Paul  
**Subject:** S&P Review of Westlands Water District  
**Importance:** High

Good evening Bobbie –

As I previously indicated, we will be working on a full review of the rating on the District's revenue bonds as a result of yesterday's SEC enforcement action. We last conducted a full review of the District in relation to the May 2013 issuance by the San Luis & Delta–Mendota Water Authority of the series 2013A bonds.

I am attaching our rating report from 2013 as a point of reference, and I am sending an attached list of key questions for your consideration to help expedite our credit review. As you can see, the bulk of our questions relate to the accounting treatment of the adjustments made in 2010 and 2012, and making sure we understand each of the revenue items in the fiscal 2015 audit – but we are also focused on the District's financial projections over the next five years.

We are hoping to schedule a meeting with the District (either in person or by phone) on March 18<sup>th</sup> or 21<sup>st</sup> to give us enough time to finalize the rating by March 25<sup>th</sup>. We will wait to hear from you for which date works best for the District.

Finally, I am also including a copy of our new water/sewer criteria that we released in January.

Regards,

Chloe



**Chloe Weil**

Director, U.S. Public Finance Infrastructure Group

Standard & Poor's Ratings Services  
One California Street, 31<sup>st</sup> Floor, San Francisco, CA 94111  
T 415.371.5026 | F 415.371.5090  
[chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)  
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---

**From:** Brown, Douglas S. [<mailto:DBROWN@SYCR.com>]

**Sent:** Thursday, March 10, 2016 1:01 PM

**To:** Weil, Chloe (Analytical)

**Cc:** Bobbie Ormonde

**Subject:** WWD

Chloe,

Per our conversation:

Bobbie Ormonde  
District Director of Finance & Administration  
[bormonde@westlandswater.org](mailto:bormonde@westlandswater.org)  
(559) 241-6203

**Douglas S. Brown**  
**Stradling**  
Attorneys at Law

Stradling Yocca Carlson & Rauth, P.C.  
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660 Newport Center Drive, Suite 1600 | Newport Beach, CA 92660  
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## Summary:

San Luis & Delta-Mendota Water  
Authority, California  
Westlands Water District; Joint  
Criteria; Water/Sewer

### Primary Credit Analyst:

Chloe S Weil, San Francisco (1) 415-371-5026; [chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)

### Secondary Contact:

James M Breeding, Dallas (1) 214-871-1407; [james.breeding@standardandpoors.com](mailto:james.breeding@standardandpoors.com)

## Table Of Contents

Rationale

Related Criteria And Research

## Summary:

# San Luis & Delta-Mendota Water Authority, California

## Westlands Water District; Joint Criteria; Water/Sewer

Credit Profile		
WestlandsWtr Dist (WestlandsWtr Dist) JOINTCRIT		
LongTermRating	AAA/A-1/Watch Neg	Current
UnenhancedRating	A+(SPUR)/Watch Neg	On CreditWatch Negative
Westlands Wtr Dist wtr & swr		
UnenhancedRating	A+(SPUR)/Watch Neg	On CreditWatch Negative

## Rationale

Standard & Poor's Rating Services placed the following ratings on CreditWatch with negative implications:

- 'A+' long-term rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes; and
- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs).

The CreditWatch placements follow the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Securities Exchange Commission (SEC) with the district, which charged key management staff with misleading investors about the district's financial condition. Prior to the SEC's action, Standard & Poor's was not aware of the district's extraordinary accounting transactions that were the subject of the proceeding.

Resolution of the CreditWatch placement is dependent on our ability to obtain timely information of satisfactory quality to maintain our rating on the securities in accordance with our applicable criteria and policies. Failure to receive the requested information by March 25, 2016 will likely result in our suspension of the affected rating, preceded, in accordance with our policies, by any change to the rating that we consider appropriate given available information.

## Related Criteria And Research

### Related Criteria

USPFCriteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016

USPFCriteria: Methodology: Definitions And RelatedAnalytic PracticesFor CovenantAnd PaymentProvisionsIn  
U.S.Public FinanceRevenueObligations, Nov. 29, 2011

USPFCriteria: AssigningIssueCredit RatingsOf Operating Entities, May 20, 2015

Criteria: Use of CreditWatch And Outlooks, Sept. 14, 2009

Ratings Detail (As Of March 14, 2016)		
WestlandsWtr Dist wtr & swr (AGM)		
<i>Unenhanced</i> Rating	A+(SPUR)/Watch Neg	On CreditWatch Negative
Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced</i> Rating	A+(SPUR)/Watch Neg	On CreditWatch Negative
San Luis & Delta-Mendota Wtr Auth, California		
WestlandsWtr Dist, California		
SanLuis & Delta-Mendota Wtr Auth (WestlandsWtr Dist) (BAM)		
<i>Unenhanced</i> Rating	A+(SPUR)/Watch Neg	On CreditWatch Negative

Many issuesare enhancedby bond insurance.

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\$50,000,000

**SAN LUIS & DELTA-MENDOTA WATER AUTHORITY  
REVENUE NOTES (DHCCP DEVELOPMENT PROJECT), SERIES 2009A**

**Dated: Date of Delivery****Due: March 1, 2014**

The Notes described herein are special obligations of the San Luis & Delta-Mendota Water Authority payable from amounts received by the Authority from Westlands Water District and certain other Authority members under the DHCCP Activity Agreements, such members being referred to herein as Financing Participants. Proceeds of the Notes will be applied to the payment of a portion of the development costs of certain water supply facilities and to pay certain costs of issuing the Notes.

The Notes are issuable in fully registered form and when issued will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York. Individual purchases will be made in principal amounts of \$5,000 and integral multiples thereof and will be in book entry form only. Purchasers of Notes will not receive certificates representing their beneficial ownership in the Notes but will receive credit balances on the books of their respective nominees; and the Notes will not be transferable or exchangeable except for transfer to another nominee of The Depository Trust Company or as otherwise described herein. The Notes shall bear interest at the rate of 4.5% per annum, which will be payable on September 1, 2009 and on each March 1 and September 1 thereafter. Such interest on and the principal of the Notes is payable by the Trustee to Cede & Co.; and such interest and principal payments are to be disbursed to the beneficial owners of the Notes through their nominees.

**The Notes are not subject to optional redemption.**

The Notes are special obligations of the Authority payable solely from Revenues (including portions of payments received by the Authority pursuant to the DHCCP Activity Agreements by and between the Authority and the Financing Participants) and amounts in certain funds and accounts established under the Indenture of Trust pursuant to which the Notes are issued. Westlands Water District has agreed pursuant to its DHCCP Activity Agreement to pay 100% of the principal of and interest on the Notes. The Authority will reimburse Westlands Water District for a portion of such debt service payments from amounts the Authority receives from other Financing Participants.

In the event that the Authority has not received from the Financing Participants amounts sufficient to pay the principal of and interest on the Notes 90 days prior to the maturity thereof, the Authority has covenanted to use commercially reasonable efforts to refund the Notes on or before the maturity date of the Notes, as more fully described herein.

Although the Financing Participants are public agencies, the obligation of each Financing Participant to make payments under its respective DHCCP Activity Agreement does not constitute an obligation for which such Financing Participant is obligated to levy or pledge any form of taxation or for which it has levied or pledged any form of taxation, but rather is an obligation payable solely from the revenues derived by the Financing Participants from the operation of its water system or irrigation system.

The Notes are not a debt of the members of the Authority, the State of California or any of its political subdivisions (other than the Authority) and neither the members of the Authority, the State of California nor any of its political subdivisions (other than the Authority) is liable under the Indenture of Trust pursuant to which the Notes are issued. The obligation of the Authority to pay the principal of and interest on the Notes does not constitute an indebtedness of the Authority in contravention of any constitutional or statutory debt limitation or restriction.

*In the opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, under existing statutes, regulations, rulings and judicial decisions and assuming certain representations and compliance with certain covenants described in the Indenture and requirements of the Internal Revenue Code of 1986, as amended, as described herein, interest on the Notes is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals and corporations. In the further opinion of Bond Counsel, interest on the Notes is exempt from State of California personal income tax. See “TAX MATTERS” herein with respect to tax consequences with respect to the Notes.*

**THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE. INVESTORS MUST READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION.**

*The Notes are offered when, as and if delivered and received by the Underwriter, subject to the approval as to their legality by Stradling Yocca Carlson & Rauth, a Professional Corporation, Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the Underwriter by its counsel Ballard Spahr Andrews & Ingersoll, LLP, Salt Lake City, Utah, for the Authority by Linneman, Burgess, Telles, Van Atta, Vierra, Rathmann, Whitehurst & Keene, Dos Palos, California, for Westlands Water District by Kronick Moskowitz, Tiedemann & Girard, Sacramento, California and for the Trustee by its counsel. It is anticipated that the Notes will be available for delivery through the facilities of The Depository Trust Company on or about April 1, 2009.*

**Citi**

Dated: March 20, 2009

## **SAN LUIS & DELTA-MENDOTA WATER AUTHORITY**

### **BOARD OF DIRECTORS**

#### ***DIVISION 1***

<b><i>Director</i></b>	<b><i>Member</i></b>
James McLeod	Banta-Carbona Irrigation District
John Sweigard	Patterson Irrigation District
William Harrison	Del Puerto Water District
Rick Gilmore	Byron Bethany Irrigation District/CVPSA

#### ***DIVISION 2***

<b><i>Director</i></b>	<b><i>Member</i></b>
Don Peracchi	Westlands Water District
Jean Sagouspe	Westlands Water District
John Bennett	Panoche Water District
Dennis Falaschi	Panoche Water District
Chris Hurd	San Luis Water District

#### ***DIVISION 3***

<b><i>Director</i></b>	<b><i>Member</i></b>
Michael Stearns	Firebaugh Canal Water District
Ann Wieser	Central California Irrigation District
James Nickel	Henry Miller Reclamation District #2131
Dave Widell	Grassland Water District

#### ***DIVISION 4***

<b><i>Director</i></b>	<b><i>Member</i></b>
Sig Sanchez	Santa Clara Valley Water District
Larry Wilson	Santa Clara Valley Water District
Frank Bettencourt	San Benito County Water District
Joseph Tonascia	San Benito County Water District

#### ***DIVISION 5***

<b><i>Director</i></b>	<b><i>Member</i></b>
Bill Pucheu	Tranquillity Irrigation District
Tom Birmingham	Broadview Water District
John Mallyon	James Irrigation District

### **OFFICERS**

Michael Stearns, Chairman  
Jean Sagouspe, Vice Chairman  
Tona Mederios, Treasurer/Auditor  
Daniel G. Nelson, Secretary  
Dennis Falaschi, Assistant Secretary

### **STAFF**

Daniel G. Nelson  
Executive Director

### **GENERAL COUNSEL**

Linneman, Burgess, Telles, Van Atta, Vierra, Rathmann, Whitehurst & Keene  
Dos Palos, California

### **BOND COUNSEL**

Stradling Yocca Carlson & Rauth, a Professional Corporation  
Sacramento, California

### **TRUSTEE**

Union Bank, N.A.  
San Francisco, California

No dealer, broker, salesperson or other person has been authorized to give any information or to make any representations other than those contained in this Official Statement in connection with the offering made hereby and, if given or made, such other information or representations must not be relied upon as having been authorized by the Authority or the Underwriter. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of the Notes by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

This Official Statement is not to be construed as a contract with the purchasers of the Notes. Statements contained in this Official Statement which involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as a representation of facts.

The Underwriter has provided the following sentence for inclusion in this Official Statement:

The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

The information set forth herein has been obtained from official sources which are believed to be reliable but it is not guaranteed as to accuracy or completeness, and is not to be construed as a representation by the Underwriter. The information and expression of opinions herein are subject to change without notice and neither delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the Authority since the date hereof.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVER ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE NOTES AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

CERTAIN STATEMENTS CONTAINED IN THIS OFFICIAL STATEMENT REFLECT NOT HISTORICAL FACTS BUT FORECASTS AND "FORWARD-LOOKING STATEMENTS." NO ASSURANCE CAN BE GIVEN THAT THE FUTURE RESULTS DISCUSSED HEREIN WILL BE ACHIEVED, AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THE FORECASTS DESCRIBED HEREIN. IN THIS RESPECT, THE WORDS "ESTIMATE," "PROJECT," "ANTICIPATE," "EXPECT," "INTEND," "BELIEVE" AND SIMILAR EXPRESSIONS ARE INTENDED TO IDENTIFY FORWARD-LOOKING STATEMENTS. ALL PROJECTIONS, FORECASTS, ASSUMPTIONS, EXPRESSIONS OF OPINIONS, ESTIMATES AND OTHER FORWARD-LOOKING STATEMENTS ARE EXPRESSLY QUALIFIED IN THEIR ENTIRETY BY THE CAUTIONARY STATEMENTS SET FORTH IN THIS OFFICIAL STATEMENT.

THE NOTES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON AN EXEMPTION CONTAINED IN SUCH ACT. THE NOTES HAVE NOT BEEN REGISTERED OR QUALIFIED UNDER THE SECURITIES LAWS OF ANY STATE.

The Authority, Westlands Water District and certain other members of the Authority maintain websites. However, the information presented there is not part of this Official Statement and should not be relied upon in making an investment decision with respect to the Notes.



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## SUMMARY STATEMENT

This summary is subject in all respects to the more complete information contained in this Official Statement, and the offering of the Notes to potential investors is made only by means of the entire Official Statement.

*Purpose.* The Notes are being sold to enable the San Luis & Delta-Mendota Water Authority to pay a portion of the DHCCP development costs of certain water supply facilities owed by the Authority under the DWR Funding Agreement and to pay certain costs of issuing the Notes.

*DHCCP Development Costs.* Pursuant to the DWR Funding Agreement, the Authority and certain Authority members are obligated to pay approximately \$70,000,000 of the development costs, including planning, preliminary design and environmental compliance actions, of certain water supply facilities referred to as the Delta Habitat Conservation and Conveyance Program. The Note proceeds, together with cash contributed by certain Authority members, cash and in kind services contributed by the Bureau of Reclamation and certain prepayments of obligations owed by certain Authority members to the Bureau of Reclamation are expected by the Authority to fully fund the \$70,000,000 estimated share of DHCCP Development Costs allocated to the Authority and its members.

*Security for the Notes.* Certain members of the Authority have entered into DHCCP Activity Agreements with the Authority pursuant to which such members are obligated to make certain payments with respect to the DHCCP Development Costs. Certain Authority members have elected to deposit cash with the Authority, while other Authority members (the Financing Participants) have elected to finance such costs through the Authority.

While a number of Authority members have elected (or may in the future elect) to finance DHCCP costs through the Authority by becoming Financing Participants, Westlands Water District is obligated pursuant to its DHCCP Activity Agreement to pay 100% of the principal of and interest on the Notes when due. The Authority will apply payments from other current and future Financing Participants to reimburse Westlands Water District for a portion of the principal of and interest on the Notes paid by Westlands Water District. Such payments, if and when received by the Authority from Financing Participants other than Westlands Water District will also constitute Revenues pledged to secure the payment of the principal of and interest on the Notes and will be applied to the payment of principal of and interest on the Notes in the event that Westlands Water District fails to make payments due under the Westlands Water District DHCCP Activity Agreement.

Each Financing Participant has agreed in its DHCCP Activity Agreement that it will, to the fullest extent permitted by law, fix, prescribe and collect rates, charges or assessments in connection with its water system or irrigation system which will be at least sufficient to yield each fiscal year water system revenues or irrigation system revenues equal to 100% of principal of and interest on the Notes required to be made by such Financing Participant in such fiscal year (other than principal of any notes which the Authority and the Financing Participant project being refinanced by bonds, notes or other obligations). Payments by each Financing Participant of amounts due under its respective DHCCP Activity Agreement are payable as operation and maintenance expenses of each Financing Participant and are payable from revenues of each Financing Participant's water or irrigation system prior to any of such Financing Participant's bonds, notes or other evidences of indebtedness.

The obligation of each Financing Participant pursuant to its respective DHCCP Activity Agreement does not constitute an obligation for which such Financing Participants is obligated to levy or pledge any form of taxation or for which it has levied or pledged any form of taxation.

THE AUTHORITY DOES NOT HAVE THE POWER TO LEVY OR COLLECT ANY FORM OF TAXES. THE OBLIGATION OF THE AUTHORITY TO MAKE PAYMENTS WITH RESPECT TO THE NOTES IS A SPECIAL OBLIGATION WHICH IS PAYABLE SOLELY FROM THE REVENUES AND OTHER AMOUNTS PLEDGED THEREFOR UNDER THE INDENTURE.

THE NOTES ARE NOT A DEBT OF THE MEMBERS OF THE AUTHORITY, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS (OTHER THAN THE AUTHORITY) AND NEITHER THE MEMBERS OF THE AUTHORITY, SAID STATE NOR ANY OF ITS POLITICAL SUBDIVISIONS (OTHER THAN THE AUTHORITY) IS LIABLE UNDER THE INDENTURE. NO MEMBER, OFFICER, AGENT, EMPLOYEE, CONSULTANT OR ATTORNEY OF THE AUTHORITY OR AN ACTIVITY AGREEMENT MEMBER IS INDIVIDUALLY OR PERSONALLY LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM OR INTEREST ON THE NOTES OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE THEREOF.

*Additional Authority Notes.* The Authority has covenanted not to create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Revenues and other assets pledged or assigned under the Indenture while any of the Notes are outstanding, except the pledge and assignment created by the Indenture. Subject to that limitation, the Authority has reserved the right to enter into one or more other indentures for any of its corporate purposes and to issue other obligations for such purposes. In addition, the Authority may at any time issue additional indebtedness payable from Revenues on a parity with the Notes if certain conditions are satisfied.

*Covenant to Refinance the Notes.* In the event that the Authority has not received from the Financing Participants amounts sufficient to pay the principal of and interest on the Notes 90 days prior to the maturity thereof, the Authority will use commercially reasonable efforts to effectuate the sale and delivery of bonds, notes or other obligations on or before the maturity date of the Notes to refund the principal portion of the Notes in excess of principal portion of the Notes for which amounts have been received from Financing Participants.

*Redemption.* The Notes are not subject to optional redemption.

*The Authority.* The San Luis & Delta-Mendota Water Authority is a public entity duly organized and existing under an Amended and Restated Joint Exercise of Powers Agreement, dated as of January 1, 1992. The Members entered into such Joint Exercise of Powers Agreement in order to exercise their common power to acquire, construct, operate and maintain works and facilities for the development and use of water resources and water rights including, without limitation, works and facilities to divert, store, pump, treat and deliver water for beneficial uses. The Authority currently operates certain Central Valley Project facilities under contract with the Bureau of Reclamation and undertakes other activities. There are 29 members of the Authority. The Authority has a staff of 89 full time and 3 temporary employees.

*Continuing Disclosure.* Westlands Water District has covenanted in a Continuing Disclosure Certificate for the Owners and Beneficial Owners of the Notes to provide certain financial information and operating data relating to Westlands Water District within nine months after the end of Westlands Water District's fiscal year (currently ending on the last day of February of each calendar year) and to provide notices of the occurrence of certain enumerated events, if material.

**\$50,000,000**  
**San Luis & Delta-Mendota Water Authority**  
**Revenue Notes (DHCCP Development Project), Series 2009A**

**INTRODUCTION**

This Official Statement, including the cover page and all appendices hereto, provides certain information concerning the sale and delivery of San Luis & Delta-Mendota Water Authority Revenue Notes (DHCCP Development Project), Series 2009A (the “Notes”). Descriptions and summaries of various documents hereinafter set forth do not purport to be comprehensive or definitive, and reference is made to each document for complete details of all terms and conditions. All statements herein are qualified in their entirety by reference to each document. Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in Appendix B hereto entitled “SUMMARY OF PRINCIPAL LEGAL DOCUMENTS.”

The Notes are being issued pursuant to an Indenture of Trust, dated as of March 1, 2009 (the “Indenture”), by and between San Luis & Delta-Mendota Water Authority (the “Authority”) and Union Bank, N.A., as trustee (the “Trustee”). The Authority is a public entity duly organized and existing under an Amended and Restated Joint Exercise of Powers Agreement -- San Luis & Delta-Mendota Water Authority (the “Joint Exercise of Powers Agreement”), dated as of January 1, 1992, by and among certain public agencies (collectively, the “Members”). Proceeds of the Notes, together with certain other moneys (including cash payments by certain Members) will be applied to pay a portion of the Authority’s share of development costs (“DHCCP Development Costs”) related to the Delta Habitat Conservation and Conveyance Program (“DHCCP”), all as more particularly described under the caption “THE DHCCP.”

The Authority’s obligation to make payments with respect to the Notes is a special obligation of the Authority payable solely from Revenues (as hereinafter defined) and any other amounts (including proceeds of the sale of the Notes) held in any fund or account established pursuant to the Indenture (except the Rebate Fund). Revenues include (a) all amounts received by the Authority or the Trustee pursuant to or with respect to Section 4.2 of certain DHCCP Activity Agreements described under the caption “THE AUTHORITY—DHCCP Activity Agreements,” executed by certain Members which have elected to finance their share of DHCCP Development Costs through the Authority (“Financing Participants”) and (b) all interest or gain derived from the investment of amounts in any of the funds or accounts established under the Indenture. No other funds or property of the Authority, including cash contributions by Members other than the Financing Participants for DHCCP Development Costs, are or will be liable for the payment of the Notes. See the caption “SECURITY FOR THE NOTES—Limited Liability.”

**CHANGES SINCE DATE OF THE PRELIMINARY OFFICIAL STATEMENT**

Certain information in this Official Statement has been updated since the Preliminary Official Statement, dated March 9, 2009, including: (i) updates to the information under the caption “THE AUTHORITY—Members Participating in the DHCCP” and in Appendix A to reflect current information with respect to Authority members participating in the DHCCP and the respective share of debt service on the Notes allocable to each Financing Participant, (ii) changes under the captions “THE DHCCP” and “AUTHORITY SHARE OF DHCCP DEVELOPMENT COSTS” to reflect execution of certain agreements, and (iii) changes to the chart entitled “Projected Operating Results and Debt Service Coverage” set forth in Appendix D—“INFORMATION CONCERNING WESTLANDS WATER DISTRICT” under the caption “THE DISTRICT—Projected Operating Results” to reflect adjustments to revenues and expenses representing actual debt service on the Notes.

## **THE AUTHORITY**

### **General**

The Authority is presently composed of 29 public agency Members which are contractors with the United States Bureau of Reclamation (the “Bureau”) and which receive water from the Central Valley Project. The Authority is located on the west side of the San Joaquin Valley and in San Benito and Santa Clara Counties. The governing body of the Authority consists of a 19-member Board of Directors elected by five divisions within the Authority. Every Member is assigned to one of the five divisions, based upon geographic location and type of CVP Contract. Each member of the Board of Directors has one vote. Current Members are listed under the caption “—Members Participating in the DHCCP” below.

The Authority was established as a joint powers authority under California law in January 1992. Its Members provide water service to a total of approximately 1,200,000 acres and to a population of over 1 million. The Authority was formed (i) to assume operation and maintenance responsibilities of certain federal facilities owned by the Bureau which serve the Authority’s Members and (ii) to provide for unified representation of its membership on matters of common interest, including regulatory, legislative, water rights and drainage matters, Central Valley Project (“CVP”) operations and contracts and the dissemination of general information. The Authority has two key policy committees that make recommendations to the Board of Directors, the Finance and Administration Committee and the Water Resources Committee, as well as steering committees that oversee specific projects. The Authority is funded by its Members, which pay operation and maintenance expenses on a per-acre foot basis for water deliveries and biannual dues to the Authority. The Authority has a staff of 89 full time and 3 temporary employees.

Responsibility for implementation of policies and directives of the Authority’s Board of Directors has been delegated to the Authority’s Executive Director, Daniel G. Nelson. Mr. Nelson has been the Authority’s Executive Director since January 1, 1992 and has 32 years of experience in the water utilities industry. Mr. Nelson is the former General Manager of San Luis Water District and Broadview Water District, both of which are Authority Members. Mr. Nelson is the past president of the California Irrigation Institute and a former member of the Bay-Delta Advisory Committee and the Governor Davis Agricultural and Water Transition Task Force. Since 2001, Mr. Nelson has served on the California Bay-Delta Public Advisory Committee pursuant to an appointment by the Secretary of the Interior. Mr. Nelson has received numerous awards for his leadership of the Authority, including the Edmund G. “Pat” Brown Award from the California Council for Environmental and Economic Balance for Participation in the Development of the Bay/Delta Accord in 1994 and a United States Senate Certificate of Commendation in 1995, and is the author of numerous articles and other publications. Mr. Nelson was educated at the University of Wisconsin at Eau Claire and earned a bachelor’s degree in Philosophy from California State University, Fresno.

### **DHCCP Activity Agreements**

Certain Members of the Authority (referred to as “Activity Agreement Members”) have entered into or are expected to enter into San Luis & Delta-Mendota Water Authority Delta Habitat Conservation and Conveyance Program Activity Agreements (the “DHCCP Activity Agreements”) with the Authority and will be obligated to pay DHCCP Development Costs allocable to the Authority for such DHCCP Development Costs pursuant to the DWR Funding Agreement described under the caption “THE DHCCP.” Certain Activity Agreement Members (referred to as “Direct Payment Participants”) have elected or may elect to deposit cash with the Authority while other Activity Agreement Members (referred to as “Financing Participants”) have elected or may elect to finance such DHCCP Development Costs through the Authority. See the caption “—Members Participating in the DHCCP.”

Pursuant to the DHCCP Activity Agreements, the Authority will establish a 7-member committee (the “DHCCP Steering Committee”) to administer the DHCCP Activity Agreements. The DHCCP Steering Committee will conduct regular meetings and has the power to set DHCCP Activity Agreement terms and policies and participate in DHCCP activities.

For further information with respect to the DHCCP Activity Agreements, see the caption “SECURITY FOR THE NOTES—DHCCP Activity Agreements with Financing Participants” and Appendix B—“SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—DHCCP Activity Agreement.”

### **Members Participating in the DHCCP**

The following chart sets forth the current DHCCP participation status of all Members and anticipated percentage shares of the Authority Note debt service on the Notes allocable to each Financing Participant. Notwithstanding the percentage shares of debt service on the Notes shown for the various Financing Participants below, Westlands Water District is obligated to pay 100% of the principal of and interest on the Notes when due under its DHCCP Activity Agreement (the “Westlands Water District DHCCP Activity Agreement”). The Trustee will apply payments of principal and interest received through the Authority from other Financing Participants to reimburse Westlands Water District. Additional information with respect to Westlands Water District is set forth in Appendix D hereto entitled “INFORMATION CONCERNING WESTLANDS WATER DISTRICT.” The Authority has not reviewed the information contained in Appendix D and the Authority makes no representation with respect to the accuracy or completeness thereof or as to the absence of material adverse changes subsequent to the date of Official Statement.



<i>Authority Member<sup>(1)</sup></i>	<i>DHCCP Activity Agreement Member<sup>(2)</sup></i>	<i>Direct Payment Participant</i>	<i>Financing Participant</i>	<i>Allocable Percentage of Note Debt Service</i>
Banta-Carbona Irrigation District	X	X		
Broadview Water District	X		X	1.44%
Byron Bethany Irrigation District				
Central California Irrigation District <sup>(3)</sup>				
City of Tracy				
Del Puerto Water District	X		X	7.48
Eagle Field Water District	X		X	0.24
Firebaugh Canal Water District <sup>(3)</sup>				
Fresno Slough Water District	X		X	0.22
Grassland Water District				
Henry Miller Reclamation District #2131 <sup>(3)</sup>				
James Irrigation District	X		X	1.95
Laguna Water District	X		X	0.04
Mercy Springs Water District				
Oro Loma Water District				
Pacheco Water District	X		X	0.54
Panoche Water District	X		X	5.01
Patterson Irrigation District				
Reclamation District 1606	X		X	0.01
San Benito County Water District	X		X	2.34
San Luis Water District	X		X	6.67
Santa Clara Valley Water District	X		X	8.22
Tranquillity Irrigation District	X		X	0.87
West Side Irrigation District				
West Stanislaus Irrigation District	X		X	2.67
Westlands Water District	X		X	62.30

<sup>(1)</sup> Pajaro Valley Water Management Agency, Pleasant Valley Water District and Turner Island Water District are members of the Authority but do not have CVP contracts. As a result, none of these public agencies are participating in the DHCCP.

<sup>(2)</sup> Banta-Carbona Irrigation District, Broadview Water District, Fresno Slough Water District, James Irrigation Water District, San Luis Water District, Santa Clara Valley Water District, Tranquillity Irrigation District, Westlands Water District and West Stanislaus Irrigation District have executed the DHCCP Activity Agreement. Other Activity Agreement Members shown as Direct Payment Participants or Financing Participants have authorized execution of a DHCCP Activity Agreement but have not yet executed such agreement.

<sup>(3)</sup> Central California Irrigation District, Firebaugh Canal Water District and Henry Miller Reclamation District #2131 are expected to participate in the DHCCP through separate agreements which are currently under negotiation.

To the extent that other Members execute DHCCP Activity Agreements and elect to become Financing Participants after the date of issuance of the Notes, payments received by the Authority from such Financing Participants will be Revenues available to pay principal of and interest on the Notes or to reimburse Westlands Water District for payments made under the Westlands Water District DHCCP Activity Agreement. Such payments also constitute Revenues pledged to secure the payment of the principal of and interest on the Notes and will be applied to the payment of principal and interest on the Notes in the event that Westlands Water District fails to make payments due under the Westlands Water District DHCCP Activity Agreement. However, the application of Revenues from other Financing Participants does not relieve Westlands Water District of its obligations under the Westlands Water District DHCCP Activity Agreement.

## **THE DHCCP**

The DHCCP is a program consisting of joint efforts by agencies of the federal government and the State of California and local agencies to fund and plan habitat conservation and water supply activities in the Sacramento-San Joaquin River Delta/San Francisco Bay Estuary (the "Bay-Delta"), including Bay-Delta water conveyance options.

Pursuant to a Memorandum of Agreement (the "MOA"), expected to be executed on or about March 13, 2009, the Authority, the California Department of Water Resources ("DWR"), the Bureau, the Santa Clara Valley Water District (a Member of the Authority referred to as "SCVWD"), the State Water Project Contractors Authority (the "SWPCA"), the Metropolitan Water District of Southern California ("MWD") and the Kern County Water Agency ("KCWA") (each a member of the SWPCA), and Westlands Water District (an Authority Member) have agreed to undertake the planning, the preliminary design and environmental compliance activities with respect to the DHCCP. The current DWR estimate cost of the preliminary phase of the DHCCP is \$140,000,000.

Pursuant to the MOA, 50% of the DHCCP Development Costs are allocated to the Authority (including Westlands Water District and SCVWD) (the "Federal Share") with the remaining 50% of such costs being allocated to DWR (including SWPCA, MWD and KCWA).

### **AUTHORITY SHARE OF DHCCP DEVELOPMENT COSTS**

Pursuant to an agreement executed on March 13, 2009, by and between DWR and the Authority (the "DWR Funding Agreement"), the Authority is responsible for funding the Federal Share of the DHCCP Development Costs. To fund such Federal Share, the Authority has entered into the DHCCP Activity Agreements with the Activity Agreement Members. The Authority currently expects the Bureau to pay approximately \$9,000,000 of DHCCP Development Costs and to provide approximately \$9,600,000 of in kind services, each of which will be a credit against the Federal Share of DHCCP Development Costs payable by the Authority. In addition, the Bureau and certain Members are currently negotiating prepayment agreements which could result in the Bureau providing \$23,000,000 of such Members' prepayments to DWR as a credit toward the Federal Share of DHCCP Development Costs.

In the event that the Bureau is not able to fund its anticipated share of DHCCP Development Costs (either the cash or in kind services described above or Members' prepayments), the Authority is responsible for paying such shortfall. Such shortfall may be funded by the Authority by Note proceeds, cash payments by Activity Agreement Members, contributions, proceeds of additional Authority notes, bonds or other obligations or other Authority funds.

## ESTIMATED SOURCES AND USES OF PROCEEDS

The following table sets forth the estimated sources and uses of proceeds of the Notes.

Sources	
Note Proceeds	<u>\$ 50,000,000.00</u>
Total Sources	<u>\$ 50,000,000.00</u>
Uses	
Construction Fund	\$ 47,346,351.05
Interest Account <sup>(1)</sup>	\$ 2,034,421.95
Costs of Issuance <sup>(2)</sup>	<u>619,227.00</u>
Total Uses	<u>\$ 50,000,000.00</u>

<sup>(1)</sup> Interest on the Notes capitalized through March 1, 2010.

<sup>(2)</sup> Includes certain legal, financing and printing costs and underwriting discount.

## THE NOTES

### General Provisions

The Notes will be dated the initial date of delivery of the Notes and will mature on the date and in the amount, and bear interest at the rate, set forth on the cover page hereof, which interest shall be payable on September 1, 2009 and on each March 1 and September 1 thereafter (each an “Interest Payment Date”). The Notes will be delivered only in fully registered form without coupons and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). DTC will act as securities depository for the Notes. Ownership interests in the Notes may be purchased in book entry form only in denominations of \$5,000 or any integral multiple thereof. See “Book Entry System” herein.

The principal of any Note is payable by check or draft of the Trustee upon presentation and surrender thereof at maturity or upon prior redemption at the principal corporate trust office of the Trustee (the “Office of the Trustee”). Interest on each Note is payable on each Interest Payment Date to the person whose name appears on the Registration Books maintained by the Trustee (the “Registration Books”) as the Owner thereof as of the close of business on the fifteenth day of the calendar month preceding the Interest Payment Date (the “Record Date”), such interest to be paid by check or draft of the Trustee sent by first class mail to the Owner at the address of such Owner as it appears on the Registration Books (except that in the case of an Owner of \$1,000,000 or more in principal amount of Notes such payment may, at such Owner’s option, be by wire transfer of immediately available funds to an account in the United States in accordance with written instructions provided to the Trustee by such Owner prior to the Record Date). The principal of and interest on the Notes shall be payable in lawful money of the United States of America.

Each Note bears interest from the Interest Payment Date next preceding the date of authentication thereof, unless (i) it is authenticated after a Record Date and on or before the following Interest Payment Date, in which event it bears interest from such Interest Payment Date, or (ii) unless it is authenticated on or before the first Record Date, in which event it will bear interest from the Closing Date; provided, however, that if, as of the date of authentication of any Note, interest thereon is in default, such Note will bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon. Interest is to be calculated on the basis of a 360 day year composed of twelve 30 day months.

## **Book Entry System**

DTC will act as securities depository for the Notes, and the Notes will be registered in the name of Cede & Co. (DTC's nominee). One fully registered certificate will be issued for each maturity of the Notes in the aggregate principal amount of such maturity and will be deposited with DTC. So long as Cede & Co. is the registered owner of the Notes, references herein to the Owners of the Notes shall mean Cede & Co. and shall not mean the actual purchasers of the Notes. The actual purchasers of the Notes are referred to as the "Beneficial Owners."

The Authority cannot and does not give any assurances that DTC participants or others will distribute payments with respect to the Notes received by DTC or its nominee as the registered Owner, or any prepayment or other notices, to the Beneficial Owners, or that they will do so on a timely basis, or that DTC will service and act in the manner described in this Official Statement.

See Appendix E for a further description of DTC and its book entry system. The information presented therein is based solely on information provided by DTC.

## **Transfers and Exchanges Upon Termination of Book Entry System**

In the event the book entry system described above is abandoned, Notes will be printed and delivered. Thereafter, any Note may, in accordance with its terms, be transferred on the Registration Books by the person in whose name it is registered, in person or by such person's duly authorized attorney, upon surrender of such Note at the Office of the Trustee for cancellation, accompanied by delivery of a duly executed written instrument of transfer in a form acceptable to the Trustee. Upon the surrender of a Note for transfer the Authority is to execute and the Trustee is to authenticate and deliver a new Note or Notes of authorized denomination or denominations for a like aggregate principal amount of the same series and maturity. The Trustee shall require the Note Owner requesting any such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer. The Trustee shall not be required to register the transfer or exchange of any Note during the period in which the Trustee is selecting Notes for redemption or of any Note that has been selected for redemption.

Notes may be exchanged at the Office of the Trustee for a like aggregate principal amount of Notes of other authorized denominations of the same series and maturity. The Trustee shall require the Note Owner requesting any such exchange to pay any tax or other governmental charge required to be paid in connection with respect to such exchange.

## **Redemption**

***Optional Redemption.*** The Notes are not subject to optional redemption.

## Debt Service Schedule

Set forth below is a schedule of principal and interest payments due on the Notes for the period ending March 1 and September 1.

<i>Date</i>	<i>Interest<sup>(1)</sup></i>	<i>Principal</i>	<i>Total</i>
September 1, 2009	\$ 937,500	\$ --	\$ 937,500
March 1, 2010	1,125,000	--	1,125,000
September 1, 2010	1,125,000	--	1,125,000
March 1, 2011	1,125,000	--	1,125,000
September 1, 2011	1,125,000	--	1,125,000
March 1, 2012	1,125,000	--	1,125,000
September 1, 2012	1,125,000	--	1,125,000
March 1, 2013	1,125,000	--	1,125,000
September 1, 2013	1,125,000	--	1,125,000
March 1, 2014	<u>1,125,000</u>	<u>50,000,000</u>	<u>51,125,000</u>
	\$ 11,062,500	\$ 50,000,000	\$ 61,062,500

<sup>(1)</sup> Interest on the Notes will be capitalized through March 1, 2010.

## SECURITY FOR THE NOTES

### General

Pursuant to the Indenture the Authority has pledged all of the Revenues and any other amounts (including proceeds of the sale of the Notes) held in any fund or account established pursuant to the Indenture (except the Rebate Fund) to secure the payment of the principal of and interest, and the premium, if any, on the Notes in accordance with their terms and the provisions of the Indenture, subject only to the provisions of the Indenture permitting the application of any of the foregoing for the purposes and on the terms and conditions set forth therein. The Authority has covenanted that such pledge will constitute a lien on and security interest in such amounts and will attach, be perfected and be valid and binding from and after the Closing Date, without any physical delivery thereof or further act and will be valid and binding against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice hereof.

In addition, the Authority has sold, assigned and transferred to the Trustee without recourse, for the benefit of the Owners of the Notes, all of its rights, title and interest in payments made by Financing Participants pursuant to Section 4.2 of the DHCCP Activity Agreements, including all rights of the Authority thereunder as may be necessary to enforce compliance with said provisions (including enforcement of payment obligations and rate covenants, if any, contained in the DHCCP Activity Agreement) or otherwise to protect the interest of the Owners of the Notes subject to the terms of the Indenture. See the caption "SECURITY FOR THE NOTES—DHCCP Activity Agreements with Financing Participants."

All Revenues are required by the Indenture to be deposited by the Authority or by the Trustee upon receipt thereof into a special fund designated as the Revenue Fund, which is established under the Indenture and which the Trustee will hold in trust, except that all moneys received by the Trustee and required under the Indenture to be deposited into the Redemption Fund for optional redemption of the Notes shall be promptly deposited therein. See the caption "FLOW OF FUNDS." All Revenues deposited with the Trustee will be held, disbursed, allocated and applied by the Trustee only as described under the caption "FLOW OF FUNDS."

## **DHCCP Activity Agreements with Financing Participants**

Each Activity Agreement Member has entered into a DHCCP Activity Agreement in order to provide for the payment of a portion of the Authority's share of DHCCP Development Costs. In accordance with the provisions of each DHCCP Activity Agreement, the Authority will fix charges to each Activity Agreement Member in order to produce revenues equal to the amounts anticipated to be needed by the Authority to meet the costs of the Authority to pay DHCCP Development Costs to DWR under the DWR Funding Agreement or, in the case of Financing Participants, debt service on the Notes, as well as certain other administrative costs.

Each Financing Participant is obligated to pay a share of debt service on the Notes and is required to make payments under its DHCCP Activity Agreement solely from, and prior to any other payment (other than its operation and maintenance expenses), the revenues of its Water System prior to any of such Financing Participant's bond, notes or other evidences of indebtedness. Each Financing Participant has agreed in its DHCCP Activity Agreement that it will, to the fullest extent permitted by law, fix, prescribe and collect rates, charges or assessments for its Water System which will be at least sufficient to yield each fiscal year net Water System revenues equal to 100% of the sum of such payments required to be made by such Financing Participant in such fiscal year pursuant to its DHCCP Activity Agreement (other than principal of any notes which the Authority and the Financing Participant project being refinanced by bonds, notes or other obligations).

**The obligation of each Activity Agreement Member to make payments under its DHCCP Activity Agreement is a several obligation and not a joint obligation with those of the other Activity Agreement Members. Payments to the Authority from Activity Agreement Members which are contributing cash and which are not Financing Participants are not pledged to the payment of, and are not available for payment of, the principal and interest on the Notes. See the caption "THE AUTHORITY—DHCCP Activity Agreements."**

The DHCCP Activity Agreements set forth detailed provisions concerning the time and method of payment by each Activity Agreement Member of certain costs, as well as the method of allocation of such costs and expenses and the remedies available to the Authority in the event a Activity Agreement Member defaults in its payments to the Authority. For a summary of these provisions see the caption "THE AUTHORITY—DHCCP Activity Agreements" and Appendix B—"SUMMARY OF PRINCIPAL LEGAL DOCUMENTS—DHCCP Activity Agreement."

## **Covenant to Refinance the Notes**

Pursuant to the Indenture, in the event that the Authority has not received from the Financing Participants amounts sufficient to pay the principal of and interest on the Notes 90 days prior to the maturity thereof, the Authority has agreed to use commercially reasonable efforts to effectuate the sale and delivery of bonds, notes or other obligations to refund the principal portion of the Notes in excess of amounts received from Financing Participants for such purpose on or before the maturity date of the Notes. Financing Participants that have not paid all amounts due under their respective DHCCP Activity Agreements 90 days before the maturity of the Notes are deemed to have approved such refinancing and to participate therein.

## **Limited Liability**

THE AUTHORITY DOES NOT HAVE THE POWER TO LEVY OR COLLECT ANY FORM OF TAXES. THE OBLIGATION OF THE AUTHORITY TO MAKE PAYMENTS WITH RESPECT

TO THE NOTES IS A SPECIAL OBLIGATION WHICH IS PAYABLE SOLELY FROM THE REVENUES AND OTHER AMOUNTS PLEDGED THEREFOR UNDER THE INDENTURE.

THE NOTES ARE NOT A DEBT OF THE MEMBERS OF THE AUTHORITY, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS (OTHER THAN THE AUTHORITY) AND NEITHER THE MEMBERS OF THE AUTHORITY, SAID STATE NOR ANY OF ITS POLITICAL SUBDIVISIONS (OTHER THAN THE AUTHORITY) IS LIABLE UNDER THE INDENTURE. NO MEMBER, OFFICER, AGENT, EMPLOYEE, CONSULTANT OR ATTORNEY OF THE AUTHORITY OR AN ACTIVITY AGREEMENT MEMBER IS INDIVIDUALLY OR PERSONALLY LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM OR INTEREST ON THE NOTES OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF THE ISSUANCE THEREOF.

The payments required to be made by the Authority with respect to the Notes are not secured by, and the Note Owners have no security interest in or mortgage on any assets of the Authority, other than the Revenues, or on the water systems or irrigation systems of any of the Financing Participants or the Members or any other property of any of them. Default by the Authority will not result in loss of any property of the Authority or any Activity Agreement Member.

Notwithstanding anything contained in the Indenture to the contrary, under no circumstances shall the obligation of any Financing Participant exceed the amount set forth in its DHCCP Activity Agreement; nor shall the Authority be required to advance any moneys derived from any source other than the Revenues and other assets pledged under the Indenture for any of the purposes in the Indenture. Nevertheless, the Authority may, but shall not be required to, advance for any of the purposes described in the Indenture any funds of the Authority which may be made available to it for such purposes.

#### **Limitations on Additional Indebtedness**

The Authority has covenanted that it will not create, or permit the creation of, any pledge, lien, charge or other encumbrances upon the Revenues and other assets pledged or assigned under the Indenture while any of the Notes are Outstanding, except the pledge and assignment created by the Indenture and except as set forth in the following paragraph. Subject to that limitation, the Authority has expressly reserved the right to enter into one or more other indentures for any of its corporate purposes, including other programs under the Joint Exercise of Powers Agreement pursuant to which it was formed, and has reserved the right to issue other obligations for such purposes.

The Authority has reserved the right to issue additional indebtedness payable from Revenues on a parity with the Notes, so long as (i) no Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) under the Indenture has occurred and is continuing (unless such Event of Default shall be cured upon such issuance), (ii) the Westlands Water District DHCCP Activity Agreement is in full force and effect, and (iii) the Trustee receives an Opinion of Counsel to the effect that such additional indebtedness is permitted under law, the Joint Powers Agreement, the Westlands Water District DHCCP Activity Agreement and is secured by Revenues on a parity with the Notes.

### **NOTEHOLDERS' RISKS**

#### **General**

The purchase of the Notes involves a variety of investment risks described in this Official Statement. If a risk factor materializes to a sufficient degree, it could delay or prevent payment of



principal of and/or interest on the Notes. Such risk factors include, but are not limited to, the following matters and should be considered, along with other information in this Official Statement, by potential investors.

### **Failure to Issue Refunding Bonds or Notes**

As further discussed in Appendix D hereto, Westlands Water District does not currently have, and does not currently project having on the maturity date of the Notes, sufficient unrestricted reserves to pay the principal of the Notes at maturity. See Appendix D—“INFORMATION CONCERNING WESTLANDS WATER DISTRICT—Investment of District Funds.” As a result, the Authority’s ability to pay principal on the Notes is dependent on the Authority’s ability to issue and sell refunding obligations prior to the maturity of the Notes.

While the Authority has covenanted to use commercially reasonable efforts to issue obligations to refund the Notes prior to maturity, a variety of events could prevent access to the municipal securities market, prohibit the Authority from issuing such bonds, notes or other obligations, or make the issuance of such bonds, notes or other obligations prohibitively expensive. Also, additional authorization for the issuance of such bonds, notes or other obligations must be obtained by the Authority and the Financing Participants prior to the issuance thereof. No assurance can be given that such a financing will be available to the Authority on sufficiently favorable terms.

## **FLOW OF FUNDS**

### **Revenue Fund**

The Trustee will transfer from the Revenue Fund and deposit into the following respective accounts, the following amounts in the following order of priority and at the following times, the requirements of each such account (including the making up of any deficiencies in any such account resulting from lack of Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any transfer is made to any account subsequent in priority:

(a) Not later than each Payment Date, the Trustee will deposit in the Interest Account that sum, if any, required to cause the aggregate amount on deposit in the Interest Account to be at least equal to the amount of interest becoming due and payable on such date on all Notes then Outstanding. The Trustee will also transfer to the applicable trustee for deposit in any applicable interest account, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any other interest in accordance with the provisions of the indenture, resolution or contract relating thereto.

(b) Not later than each Payment Date, the Trustee will deposit in the Principal Account that sum, if any, required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Notes coming due and payable on such date. The Trustee will also transfer to the applicable trustee for deposit in any applicable principal account, without preference or priority, and in the event of any insufficiency of such moneys ratably without any discrimination or preference, any other principal in accordance with the provisions of the indenture, resolution or contract relating thereto.

(c) On each Interest Payment Date, the Trustee will transfer all amounts remaining on deposit in the Revenue Fund to Westlands Water District in accordance with the Westlands Water District DHCCP Activity Agreement.

All amounts in the Interest Account will be used and withdrawn by the Trustee solely for the purpose of paying interest on the Notes as it becomes due and payable (including accrued interest on any Notes purchased or accelerated prior to maturity pursuant to the Indenture). All amounts in the Principal Account will be used and withdrawn by the Trustee solely to pay the principal amount of the Notes at maturity, purchase or acceleration; provided, however, that at any time prior to selection for redemption of any such Notes, upon written direction of the Authority, the Trustee will apply such amounts to the purchase of Notes at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as shall be directed pursuant to a Request of the Authority, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to the Notes.

### **Redemption Fund**

The Trustee will also establish, maintain to hold a special fund designated as the “Redemption Fund” and to hold in trust all amounts therein. All amounts in the Redemption Fund will be used and withdrawn by the Trustee solely for the purpose of paying the principal of and accrued interest on the Notes to be redeemed on such redemption date pursuant to the Indenture; provided, however, that at any time prior to selection for redemption of any such Notes, upon written direction of the Authority, the Trustee will apply such amounts to the purchase of Notes at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as directed pursuant to a Request of the Authority, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to the Notes.

### **APPROVAL OF LEGAL PROCEEDINGS**

The legality and enforceability of the Notes is subject to the approval of Stradling Yocca Carlson & Rauth, a Professional Corporation, acting as Bond Counsel. The form of such legal opinion is attached hereto as Appendix C. Certain legal matters will be passed upon for the Authority by Linneman, Burgess, Telles, Van Atta, Vierra, Rathmann, Whitehurst & Keene, Dos Palos, California, for the Underwriter by its counsel, Ballard Spahr Andrews & Ingersoll, LLP, Salt Lake City, Utah, for the Trustee by its counsel and for Westlands Water District by Kronick Moskovitz Tiedemann & Girard, Sacramento, California.

### **LITIGATION**

There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body, pending or, to the knowledge of the Authority, threatened against the Authority affecting the existence of the Authority or the titles of its directors or officers to their respective offices or seeking to restrain or to enjoin the sale or delivery of the Notes, the application of the proceeds thereof in accordance with the Indenture, or in any way contesting or affecting the validity or enforceability of the Notes, the Indenture or the DHCCP Activity Agreements, or any action of the Authority contemplated by any of said documents, or in any way contesting the completeness or accuracy of this Official Statement or any amendment or supplement thereto, or contesting the powers of the Authority or its authority with respect to the Notes or any action of the Authority contemplated by any of said documents, nor to the knowledge of the Authority, is there any basis therefor.

At the time of delivery of and payment for the Notes, Westlands Water District will certify that, except as discussed in Appendix D, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body, pending or, to the knowledge of such entity, threatened against Westlands Water District affecting the existence of such entity or the titles of its directors or officers to their respective offices or seeking to restrain or to enjoin the sale or delivery of the Notes, the application of the proceeds thereof in accordance with the Indenture, or in any

way contesting or affecting the validity or enforceability of the Notes, the Indenture, the Westlands Water District DHCCP Activity Agreement or any action of such entity contemplated by any of said documents, or in any way contesting the completeness or accuracy of this Official Statement or any amendment or supplement thereto, or contesting the powers of such entity or any action of such entity contemplated by any of said documents, nor to the knowledge of such entity, is there any basis therefor.

### **CONTINUING DISCLOSURE**

Westlands Water District has covenanted in a Continuing Disclosure Certificate for the benefit of Owners and Beneficial Owners of the Notes to provide certain financial information and operating data (the “Annual Report”) relating to Westlands Water District within nine months after the end of Westlands Water District’s fiscal year (currently ending on the last day of February of each calendar year) and to provide notices of the occurrence of certain enumerated events, if material (the “Listed Events”). The Annual Report and the notices of material events will be filed by Westlands Water District with each National Recognized Municipal Securities Information Repository. The specific nature of the information to be contained in the Annual Report and Notice of material events is set forth in Appendix F. These covenants have been made in order to assist the participating underwriter in complying with Rule 15c2-12(b)(5) promulgated under the Securities Exchange Act of 1934. Westlands Water District has never failed to comply with prior continuing disclosure obligations in any material respect.

### **TAX MATTERS**

In the opinion of Stradling Yocca Carlson & Rauth, a Professional Corporation, Sacramento, California, Bond Counsel (“Bond Counsel”), under existing statutes, regulations, rulings and judicial decisions, and assuming continuing compliance by the Authority with certain covenants in the Indenture and requirements of the Internal Revenue Code of 1986, as amended (the “Code”), interest on the Notes is excluded from gross income for federal income tax purposes, and is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on individuals and corporations. In the further opinion of Bond Counsel, interest on the Notes is exempt from State of California personal income tax. Bond Counsel notes that, with respect to corporations, interest on the Notes is not included as an adjustment in the calculation of alternative minimum taxable income which may effect the alternative minimum tax liability of such corporations.

Bond Counsel’s opinion as to the exclusion from gross income of interest with respect to the Notes is based upon certain representations of fact and certifications made by the Authority and others and is subject to the condition that the Authority complies with all requirements of the Code, that must be satisfied subsequent to the issuance of the Notes to assure that interest will not become includable in gross income for federal income tax purposes. Failure to comply with such requirements of the Code might cause interest with respect to the Notes to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Notes. The Authority has covenanted to comply with all such requirements.

The Internal Revenue Service (the “IRS”) has initiated an expanded program for the auditing of tax-exempt bond issues, including both random and targeted audits. It is possible that the Notes will be selected for audit by the IRS. It is also possible that the market value of the Notes might be affected as a result of such an audit of the Notes (or by an audit of similar bonds). No assurance can be given that in the course of an audit, as a result of an audit, or otherwise, Congress or the IRS might not change the Code (or interpretation thereof) subsequent to the issuance of the Notes to the extent that it adversely affects the exclusion from gross income of interest on the Notes or their market value.

It is possible that subsequent to the issuance of the Notes there might be federal, state, or local statutory changes (or judicial or regulatory interpretations of federal, state, or local law) that affect the federal, state, or local tax treatment of the Notes or the market value of the Notes. No assurance can be given that subsequent to the issuance of the Notes such changes or interpretations will not occur.

Bond Counsel's opinions may be affected by actions taken (or not taken) or events occurring (or not occurring) after the date hereof. Bond Counsel has not undertaken to determine, or to inform any person, whether any such actions or events are taken or do occur. The Indenture and the Tax Certificate relating to the Notes permit certain actions to be taken or to be omitted if a favorable opinion of Bond Counsel is provided with respect thereto. Bond Counsel expresses no opinion as to the effect on the exclusion from gross income of interest on the Notes for federal income tax purposes with respect to any Notes if any such action is taken or omitted based upon the advice of counsel other than Stradling Yocca Carlson & Rauth, a Professional Corporation.

Although Bond Counsel has rendered an opinion that interest with respect to the Notes is excluded from gross income for federal income tax purposes provided that the Authority continues to comply with certain requirements of the Code, the ownership of the Notes and the accrual or receipt of interest with respect to the Notes may otherwise affect the tax liability of certain persons. Bond Counsel expresses no opinion regarding any such tax consequences. Accordingly, before purchasing any of the Note, all potential purchasers should consult their tax advisors with respect to collateral tax consequences with respect to the Notes.

## **RATINGS**

Standard & Poor's Ratings Services, a division of The McGraw Hill Companies, Inc., and Fitch Ratings have assigned the Notes ratings of "A+" and "A", respectively. The ratings reflect only the view of such organizations; and an explanation of the significance of such ratings may be obtained from Standard & Poor's, 25 Broadway, New York, New York 10004, (212) 208-1974 and Fitch Ratings, One State Street Plaza, New York, New York 10004, (212) 908-0500. There is no assurance that the ratings will continue for any given period of time or that they will not be revised downward or withdrawn entirely by such rating agencies. Any such downward revision or withdrawal of ratings may have an adverse effect on the market price of the Notes.

## **UNDERWRITING**

The Notes will be purchased by Citigroup Global Markets Inc., as underwriter (the "Underwriter"), under a Purchase Contract, dated March 20, 2009 (the "Purchase Contract"), pursuant to which the Underwriter agrees to purchase all of the Notes for an aggregate purchase price of \$49,608,981.00 (representing the principal amount thereof less an underwriter's discount of \$391,019.00).

The initial public offering price may be changed from time to time by the Underwriter. The Underwriter may offer and sell the Notes to certain dealers (including dealers depositing Notes into investment trusts), dealer banks, banks acting as agents and others at prices lower than said public offering price.

## MISCELLANEOUS

Insofar as any statements made in this Official Statement involve matters of opinion or of estimates, whether or not expressly stated, they are set forth as such and not as representations of fact. No representation is made that any of such statements made will be realized. Neither this Official Statement nor any statement which may have been made verbally or in writing is to be construed as a contract with the Owners of the Notes.

The execution and delivery of this Official Statement have been duly authorized by the Authority.

SAN LUIS & DELTA-MENDOTA AUTHORITY

By:                     /s/ Michael Stearns                      
Chairman

**APPENDIX A**

**FINANCING PARTICIPANTS**

<i>Authority Member</i>	<i>Estimated Percentage of Authority Note Debt Service</i>
Broadview Water District	1.44%
Del Puerto Water District	7.48
Eagle Field Water District	0.24
Fresno Slough Water District	0.22
James Irrigation District	1.95
Laguna Water District	0.04
Pacheco Water District	0.54
Panoche Water District	5.01
Reclamation District 1606	0.01
San Benito County Water District	2.34
San Luis Water District	6.67
Santa Clara Valley Water District	8.22
Tranquillity Irrigation District	0.87
West Stanislaus Irrigation District	2.67
Westlands Water District	<u>62.30</u>
TOTAL	100.00%

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\* Authority Members' estimated percentage of Authority Note debt service may vary in the event that additional Authority Members elect to become Financing Participants after the date of the Official Statement. Notwithstanding the percentages set forth in this Appendix A, Westlands Water District's obligation under the Westlands Water District DHCCP Activity Agreement is to pay to the Authority 100% of the principal of and interest due on the Notes. The Authority will apply all payments of principal and interest received from Financing Participants other than Westlands Water District to reimburse Westlands Water District for a portion of such payments. See the caption "THE AUTHORITY—Members Participating in the DHCCP."

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## **APPENDIX B**

### **SUMMARY OF PRINCIPAL LEGAL DOCUMENTS**

*The following is a summary of certain provisions of the Westlands Water District DHCCP Activity Agreement and the Indenture of Trust, which are not described elsewhere. This summary does not purport to be comprehensive and reference should be made to the respective agreement for a full and complete statement of the provisions thereof.*

#### **WESTLANDS WATER DISTRICT DHCCP ACTIVITY AGREEMENT**

##### **DEFINITIONS**

“Activity Agreement Expenses” means all direct expenses incurred pursuant to the DHCCP Activity Agreement and any Memorandum of Understanding authorized thereby, together with Water Authority Administration Costs allocable to Activity Agreement Members in conjunction with the DHCCP Activity Agreement, the collection of which is authorized by the Administration Agreement signed by each member of the Water Authority or by the Memorandum of Understanding signed by a Non-Member Participating Party, together with expenses incurred specifically for purposes of the DHCCP Activity Agreement.

“Activity Agreement Member(s)” means the Water Authority Member(s) who execute the DHCCP Activity Agreement; except where distinguished by context or by express provision of the DHCCP Activity Agreement or of an MOU, the term “Activity Agreement Member(s)” will also refer to any Non-Member Participating Party(ies) who executed an MOU so as to participate in the DHCCP Activity Agreement.

“Administration Agreement(s)” means those certain agreements between the Water Authority and its Members for the undertaking of activities and sharing of costs and benefits pursuant to the JPA Agreement.

“Brown Act” means the Ralph M. Brown Act (California Government Code Sections 54950 et seq.).

“DHCCP Activity Agreements” means the San Luis & Delta-Mendota Water Authority Delta Habitat Conservation and Conveyance Program Activity Agreements, each dated as of March 1, 2009, by and between the Water Authority and each Activity Agreement Member.

“Direct Payment Participant” means an Activity Agreement Member selecting Payment Option 1.

“DWR” means the Department of Water Resources of the State of California.

“DWR Funding Agreement” means that certain Agreement for Funding Between the Department of Water Resources and the San Luis & Delta Mendota Water Authority for the Costs of Environmental Analysis, Planning and Design of Delta Conservation Measures, Including Delta Conveyance Options, by and between DWR and the Water Authority, as amended from time to time.

“Financing Participant” means an Activity Agreement Member selecting Payment Option 2.

“Financing Participant Percentage” means the participation percentage of each Financing Participant as described in the DHCCP Activity Agreement.

“Indenture” means the Indenture of Trust, dated as of March 1, 2009, by and between the Authority and Union Bank, N.A., as trustee, as originally executed or as it may from time to time be supplemented, modified or amended by any supplemental indenture.

“IPA Agreement” means the Amended and Restated Joint Exercise of Powers Agreement -- San Luis & Delta-Mendota Water Authority, dated as of January 1, 1992.

“Memorandum of Understanding” or “MOU” means an agreement in the form approved by the Steering Committee and Water Authority Board of Directors between the Water Authority and a local agency, mutual water company or other party that is not a member of the Water Authority but which desires to participate in the DHCCP Activity Agreement as a Non-Member Participating Party.

“Non-Member Participating Party” means a local agency, mutual water company or other party which is not a member of the Water Authority but which by execution of an MOU agrees to undertake the same obligations and is accorded the same benefits as a member of the Water Authority that has executed the DHCCP Activity Agreement.

“Notices to Participate” means those certain notices delivered by Activity Agreement Members to the Water Authority described in the DHCCP Activity Agreement.

“Participation Percentage” means the participation percentage of each Activity Agreement Member as described in the DHCCP Activity Agreement.

“Participation Period” means the period between the execution of the DHCCP Activity Agreement by any Activity Agreement Member and the Water Authority, and March 30, 2009.

“Payment Option 1” means the payment option by that name described under the caption “NOTICE TO PARTICIPATE—Payment Option 1: Direct Payment” below.

“Payment Option 2” means the payment option by that name described under the caption “NOTICE TO PARTICIPATE—Payment Option 2: Payment of Debt Service” below.

“Steering Committee” means that certain steering committee described in the DHCCP Activity Agreement.

“Water Authority” means the San Luis & Delta-Mendota Water Authority, a joint powers agency separate from its members.

“Water Authority Administration Costs” means Water Authority general administrative expenses, a percentage of which will be allocated to the DHCCP Activity Agreement by the Water Authority.

“Westlands Water District” means the Westlands Water District, a member of the Water Authority duly organized and existing under and by virtue of the laws of the State of California.

## AGREEMENT TO PAY FOR DWR FUNDING AGREEMENT AND ACTIVITY AGREEMENT EXPENSES

The Activity Agreement Members will pay to the Water Authority their respective shares of costs incurred by the Water Authority pursuant to the DWR Funding Agreement in accordance with Payment Option 1 or Payment Option 2 selected by each Activity Agreement Member on its Notice to Participate under the DHCCP Activity Agreement. The Water Authority agrees to apply these funds to meet Water Authority financial obligations under the DWR Funding Agreement in accordance with the Payment Options selected by each Activity Agreement Member, including by making direct payments to DWR and by making payments required for notes, bonds or other obligations issued under the authorization of the DHCCP Activity Agreement. Activity Agreement Members further agree to pay their share of Activity Agreement Expenses allocated pursuant to the DHCCP Activity Agreement.

MOUs with Non-Member Participating Parties. The Water Authority is authorized to extend participation in the benefits and obligations of the DHCCP Activity Agreement to Non-Member Participating Parties as are authorized by law to contract with the Water Authority, by entering into a Memorandum of Understanding with each Non-Member Participating Party, which participation is conditioned upon each Non-Member Participating Party's agreement to pay its share of costs and to select Payment Option 1 or Payment Option 2 by providing Notice to Participate as set forth in the DHCCP Activity Agreement, and upon full performance of the obligations set forth in the MOU.

### PARTICIPATION PERCENTAGES

Each Activity Agreement Member agrees to pay or advance to the Water Authority, from its water or irrigation system revenues only as an operations and maintenance expense of its water or irrigation system, its participation percentage of the costs authorized by Activity Agreement Members in accordance with the DHCCP Activity Agreement. The participation percentage of each Activity Agreement Member (as modified from time to time in accordance with the DHCCP Activity Agreement, each a "Participation Percentage") will be based on the following formula:

[Activity Agreement Member's Central Valley Project Water Service Contract Total] + [12.5% of Activity Agreement Member's entitlement to water supplied by the Authority, when available, known as exchange or settlement water]

Divided by

[Contract Total of all Activity Agreement Members' Central Valley Project Water Service Contracts] + [12.5% of Contract Total of all Activity Agreement Members' entitlement to water supplied by the Authority, when available, known as exchange or settlement water\*]

\*Grassland Water District Central Valley Project contract water is treated as exchange or settlement water.

A schedule of the anticipated Participation Percentages for the Activity Agreement Members are set forth in the DHCCP Activity Agreement.

Updating Participation Percentages. The schedule of Participation Percentages will be revised to conform the anticipated participation described in the DHCCP Activity Agreement to the Participation Percentages of the parties who ultimately execute the DHCCP Activity Agreement or an MOU. Participation Percentages will be recalculated under the formula set forth in the DHCCP Activity Agreement. Changes in Activity Agreement Members, adjustments in Participation Percentages and reallocation of Activity Agreement Expenses that are authorized by the DHCCP Activity Agreement will be documented by attaching to the Activity Agreement a revised schedule of Participation Percentages without further amendment of the DHCCP Activity Agreement being required.

#### ADVANCE OF FUNDS; REIMBURSEMENT FROM SUBSEQUENT FUNDING

To expedite the DWR Funding Agreement and satisfy the contingency for Water Authority execution of the DWR Funding Agreement, Westlands Water District will execute the DHCCP Activity Agreement and advance funds required to bring and keep the Water Authority current in its obligations under the DWR Funding Agreement until other sources of funding become available under the DHCCP Activity Agreement. The Water Authority will fully repay Westlands Water District for its advanced funds from financings and DHCCP Activity Agreement collections consistent with the DHCCP Activity Agreement, provided that the repayment does not diminish Westlands Water District's Participation Percentage or its obligation to pay under the DHCCP Activity Agreement. The obligation will also apply to other Activity Agreement Members, if any, who agree to advance funds to the Water Authority for purposes of Water Authority obligations under the DWR Funding Agreement that must be paid before the Water Authority can collect or finance Activity Agreement Expenses.

#### NOTICE TO PARTICIPATE

During the Participation Period, each Activity Agreement Member will deliver to the Water Authority a Notice to Participate in the amount of its then-assigned Participation Percentage by selection of Payment Option 1 or Payment Option 2. An Activity Agreement Member's failure to deliver the Notice to Participate prior to March 30, 2009 constitutes notice of withdrawal from the DHCCP Activity Agreement pursuant thereto; provided, that the Steering Committee may extend the deadline by up to ninety (90) days in order to accommodate time requirements for an Activity Agreement Member to meet legal obligations necessary for its performance under the DHCCP Activity Agreement.

Payment Option 1: Direct Payment. An Activity Agreement Member may submit to the Water Authority its Notice to Participate under Payment Option 1. An Activity Agreement Member selecting Payment Option 1 is referred to as a "Direct Payment Participant."

(a) Payment Obligation. A Direct Payment Participant who selects Payment Option 1 on its Notice to Participate will pay to the Water Authority its calculated share, based upon its Participation Percentage, of payments owed by the Water Authority to DWR under the DWR Funding Agreement, as increased or decreased by any amendment to the DWR Funding Agreement.

(b) Payment Terms. Payments from Direct Payment Participants will be on the terms determined by the Steering Committee in order to fulfill the Water Authority's obligations to make monthly payments under the DWR Funding Agreement, including terms providing

mechanisms to address increases, adjustments and decreases of the obligations, as well as to fix the timing of payments.

(c) Direct Payment Participant Repayment Schedule. The obligation of Direct Payment Participants to make direct payments will be documented in a Payment Option 1 repayment schedule in substantially the form set forth in the DHCCP Activity Agreement, which Payment Option 1 repayment schedule will be executed by an authorized officer of each Direct Payment Participant. In the event, due to changes in timing, increases, or other adjustments, the Direct Payment Participant repayment schedule does not produce adequate funds to cover a Direct Payment Participant's Participation Percentage of obligations owed by the Water Authority under the DWR Funding Agreement on the schedule on which the Water Authority is required to make the payments, the Water Authority will advance the balance of the Direct Payment Participant's obligation; providing that the Water Authority: (i) has available proceeds of bonds, notes or other obligations issued pursuant to the DHCCP Activity Agreement; and (ii) has received an approving opinion of Stradling, Yocca, Carlson & Rauth with respect to no adverse effect on the exclusion of interest on bonds, notes or other obligations being caused by the advance. In that case, the additional payment by the Water Authority on behalf of the Direct Payment Participant will bear interest as set forth in the DHCCP Activity Agreement.

(d) Direct Payments from Central California Irrigation District, Firebaugh Canal Water District, and Henry Miller Reclamation District #2131, and Columbia Canal Company. In order to accommodate their budget cycles to the timing of the DHCCP Activity Agreement, Central California Irrigation District, Firebaugh Canal Water District, Henry Miller Reclamation District #2131 and Columbia Canal Company (a Non-Member Participating Party) have previously authorized participating in the DHCCP Activity Agreement as Direct Payment Participants based upon three annual payments reflecting the following annual Direct Payment Participant obligations:

Central California Irrigation District	3.21% of \$13,000,000, or \$417,813;
Firebaugh Canal Water District	.51% of \$13,000,000, or \$66,706;
HMRD No. 2131	.99% of \$13,000,000, or \$128,389; and
Columbia Canal Company	.36% of \$13,000,000, or \$46,302.

Adjustments of these Direct Payment Participant shares will be implemented through the mechanisms described in the DHCCP Activity Agreement; provided, that except for their agreement to pay interest charged by the Water Authority under the DHCCP Activity Agreement, Central California Irrigation District, Firebaugh Canal Water District, Henry Miller Reclamation District #2131 and Columbia Canal Company do not agree to pay any share of DWR Funding Agreement costs in excess of the total amounts described above.

Updating Direct Payment Participant Schedule. The schedule of Direct Payment Participants will be revised to conform the anticipated participation described in the DHCCP Activity Agreement to the Direct Payment Participants who ultimately select Payment Option 2. Changes in Direct Payment Participants and adjustments in Participation Percentages that are authorized by the DHCCP Activity Agreement will be documented by attaching to the DHCCP Activity Agreement a revised exhibit, without further amendment of the DHCCP Activity Agreement being required.

Payment Option 2: Payment of Debt Service. An Activity Agreement Member may submit to the Water Authority its Notice to Participate under Payment Option 2. An Activity Agreement Member selecting Payment Option 2 is referred to as a "Financing Participant."

(a) Financing Participant Payment Obligation. Each Financing Participant who selects Payment Option 2 on its Notice to Participate agrees to pay to the Water Authority its calculated share of debt service on Water Authority financing issued to fund Water Authority payment obligations under the DWR Funding Agreement, including its share of any final payment of principal and any refinancing as set forth in the DHCCP Activity Agreement. The Financing Participant Percentages will be calculated as follows:

[Financing Participant's Central Valley Project Water Service Contract Total] + [12.5% of Financing Participant's entitlement to water supplied by the Water Authority, when available, known as exchange or settlement water]

Divided by

[Contract Total of All Financing Participants' Central Valley Project Water Service Contracts] + [12.5% of Contract Total of All Financing Participants' entitlement to water supplied by the Water Authority, when available, known as exchange or settlement water\*]

\*Grassland Water District Central Valley Project contract water is treated as exchange or settlement water.

(b) Financing Participant's Repayment Schedule. The obligation of Financing Participants to make debt service payments will be documented in a Payment Option 2 repayment schedule in substantially the form set forth in the DHCCP Activity Agreement, which Payment Option 2 repayment schedule will be executed by an authorized officer of each Financing Participant.

(c) Updating Financing Participant Schedule. The schedule of Financing Participant Percentages will be revised to conform the anticipated participation described in the DHCCP Activity Agreement to the Financing Participant Percentages of the parties who ultimately select Payment Option 1. Financing Participant Percentages will be recalculated under the formula set forth in the DHCCP Activity Agreement. Changes in Financing Participants and adjustments in Financing Participant Percentages that are authorized by the DHCCP Activity Agreement will be documented by attaching to the DHCCP Activity Agreement a revised exhibit without further amendment of the DHCCP Activity Agreement being required.

(d) Additional Terms. Additional terms governing Financing Participants are set forth below.

#### AUTHORIZATION TO ISSUE BONDS, NOTES OR OTHER OBLIGATIONS

The Water Authority will use its best efforts to issue or cause to be issued bonds, notes or other obligations pursuant to the JPA Agreement repayable from payments to be made by Financing Participants who submit Notices to Participate under Payment Option 2. The initial issuance is estimated to be \$50 million and will be upon approval of the Water Authority Board of Directors and the Board of Directors of Westlands Water District as the initial Activity Agreement Member pursuant to a Notice to Participate under Payment Option 2. A refinancing of the initial issuance is anticipated and Financing Participants who do not pay off their share of principal 90 days before the maturity date are obligated under the DHCCP Activity Agreement to participate in the refinancing.

The DHCCP Activity Agreement sets forth the anticipated cost allocation of principal for the initial issuance. The DHCCP Activity Agreement will be revised to conform the anticipated participation described in the DHCCP Activity Agreement to the Financing Participants who ultimately select Payment Option 2 in the same manner as described in the DHCCP Activity Agreement. The changes will be documented by attaching to the DHCCP Activity Agreement a revised exhibit without further amendment of the DHCCP Activity Agreement being required. Provided, however, that any debts, liabilities, obligations and indebtedness incurred by the Water Authority pursuant to the DHCCP Activity Agreement will not be debts, liabilities, obligations or indebtedness of any member of the Water Authority other than Activity Agreement Members providing Notice to Participate under Payment Option 2. No Activity Agreement Member will be obligated for amounts owed by another Activity Agreement Member on account of any issuance authorized by the DHCCP Activity Agreement, except as provided therein. Any refinancing of the initial issuance, any additional issuance and any refinancing of a prior issuance will be upon approval of the Water Authority and the Activity Agreement Members; provided, that Activity Agreement Members who are obligated to refinance their share of principal of the initial issuance pursuant to the DHCCP Activity Agreement are deemed to have approved the refinancing; provided, further, that no financing in contravention of commitments of the Water Authority or Westlands Water District under the initial issuance of bonds, notes or other obligations under the DHCCP Activity Agreement is authorized thereby.

#### TERMS APPLICABLE TO PAYMENT OPTION 2 FINANCING PARTICIPANTS

##### Terms Applicable to Westlands Water District as the Initial Financing Participant.

(a) Cooperation, Disclosure and Documents. Westlands Water District will cooperate with the Water Authority for the purpose of expediting the issuance of bonds, notes or other obligations to finance the Water Authority's financial obligations under the DWR Funding Agreement by providing information and disclosure as may be required, and by delivering all closing documents required by the Water Authority or Water Authority bond counsel at the closing of the bonds, notes or other obligations described in the DHCCP Activity Agreement.

(b) Westlands' Water District's Payment Obligation and Right to Reimbursement by Trustee. Westlands Water District will pay 100% of the principal and interest when due on any financing issued by the Water Authority for purpose of funding Water Authority obligations under the DWR Funding Agreement. As other parties become Financing Participants as described in the DHCCP Activity Agreement, the Water Authority will, pursuant to the Indenture, remit payments received from other Financing Participants who have elected Payment Option 2 to the Trustee on the schedule required by the Indenture, and Union Bank, N.A., as trustee, will reimburse Westlands Water District for amounts in excess of Westlands Water District's Financing Participant Percentage of the financing pursuant to the Indenture; provided, that failure of a Financing Participant to make payment required by the DHCCP Activity Agreement will not relieve Westlands Water District of its obligation to pay 100% of the outstanding notes, bonds or other obligations.

(c) Additional Information. Westlands Water District will annually provide, on the schedule requested by the Water Authority, the information as the Water Authority requires from Westlands Water District in order to comply with its obligations under any continuing disclosure certificate required in connection with financing the Water Authority's obligations under the DWR Funding Agreement.

(d) Additional Documents. Westlands Water District will execute additional documents, including but not limited to, any necessary further assurances in relation to the financing, as the Water Authority may reasonably request.

Additional Financing Participants. In consideration of the payment provided for in the DHCCP Activity Agreement, each party who submits a Notice to Participate during the Participation Period designating Payment Option 2 and who has not withdrawn, or who is not then in default, has the right to participate in the Water Authority financing authorized under the DHCCP Activity Agreement to pay its share of Water Authority obligations under the DWR Funding Agreement in accordance with its Financing Participant Percentage and the terms of the DHCCP Activity Agreement.

Payment Option 2 Repayment Schedule. Promptly following the close of the Participation Period, the Water Authority will provide a Payment Option 2 (Financing Participant) repayment schedule for each Financing Participant for execution by the Financing Participant, designating the Financing Participant's share of Water Authority obligations under the DWR Funding Agreement in accordance with its Financing Participant Percentage. The payments will be made on the schedule determined by the Water Authority in order to fulfill the Water Authority's debt service obligations for the financing.

(a) Amendment of Payment Option 2 Repayment Schedule. Except as provided in the DHCCP Activity Agreement, as needed to accommodate refinancing authorized by the DHCCP Activity Agreement, or as needed to reflect adjustments in payments to true up estimated earned interest or other available credits applied to the Financing Participant's repayment obligation, each Financing Participant's executed Payment Option 2 repayment schedule will not be amended without approval of the Water Authority, the Steering Committee and the respective Financing Participant's Board of Directors.

Irrevocable Assignment to Trustee. The Financing Participants acknowledge and agree that the Water Authority has assigned or will assign to Union Bank, N.A., as trustee under the Indenture, without recourse, all of the Water Authority's rights, title, and interest in payments made by the Financing Participants pursuant to the DHCCP Activity Agreements, including all rights of the Water Authority as may be necessary to enforce compliance with said provisions (including enforcement of payment obligations and rate covenants, if any, contained in the DHCCP Activity Agreements).

Future Financing. In the event a Financing Participant participates in any future borrowing or refinancing authorized by the DHCCP Activity Agreement, the Financing Participant will undertake the same obligations as are set forth for Westlands Water District in the DHCCP Activity Agreement.

#### DEMAND FOR PAYMENT; INTEREST; WATER AUTHORITY'S OBLIGATION TO APPLY PAYMENTS

Demand for Payment. The Water Authority will demand from each Direct Payment Participant and Financing Participant payment of its respective Participation Percentage or Financing Participant Percentage on the schedule required to meet Water Authority obligations under the DWR Funding Agreement for Direct Payment Participants that have selected Payment Option 1 and on the Water Authority's repayment schedule for Financing Participants that have selected Payment Option 2.



Interest on Late Payment. Any part of the demand by the Water Authority which remains unpaid for sixty (60) days after its billing date will bear interest from the sixtieth day thereafter at the interest rate of the Local Agency Investment Fund then in effect computed on a monthly basis plus two percent until paid. Interest so earned will not change any Financing Participant Percentage and will be applied to the Financing Participant's share of Activity Agreement Expenses.

Water Authority Responsibility re Collected Funds. The Water Authority will apply the funds paid by the Direct Payment Participants and Financing Participants to effect the purposes described the DHCCP Activity Agreement in the amounts required to satisfy Water Authority obligations under the DWR Funding Agreement and Water Authority repayment obligations under any financing issued in accordance with the DHCCP Activity Agreement. The Water Authority will keep amounts collected under the DHCCP Activity Agreement in a designated account, promptly pay when due the amounts collected under the DHCCP Activity Agreement, provide accounting and payment information to the Direct Payment Participants and Financing Participants, and take other reasonable actions as may be requested by the Activity Agreement Members and agreed to by the Water Authority; provided, that failure of the Water Authority or of a Financing Participant to make payment required by the DHCCP Activity Agreement will not relieve Westlands Water District of its obligation to pay 100% of the outstanding notes, bonds or other obligations.

#### SOURCE OF PAYMENTS

In order to meet payment obligations of the DHCCP Activity Agreement in accordance with the JPA and the respective Administration Agreements, each Activity Agreement Member will, to the fullest extent permitted by law, fix rates, charges or assessments in connection with its water or irrigation system so that it will at all times have sufficient money to meet its obligations under the DHCCP Activity Agreement (other than the principal of any notes which the Water Authority and the Activity Agreement Members project being refinanced in accordance with the DHCCP Activity Agreement). Each Financing Participant confirms that payment of its obligations under its respective Payment Option 2 repayment schedule constitutes an operation and maintenance expense of the Financing Participant's water or irrigation system for accounting purposes and that, as an operation and maintenance expense, there are no liens, charges or encumbrances thereon, or priority of payments with respect thereto, prior to the payment of amounts under the DHCCP Activity Agreement or under the Payment Option 2 repayment schedule. Each Activity Agreement Member confirms that the Water Authority and other Activity Agreement Members are third party beneficiaries of the Direct Payment Participant's Payment Option 1 or Financing Participant's Payment Option 2 repayment schedule and may take actions in law or in equity as may be desirable to enforce payments thereunder.

#### CONDITIONAL REPAYMENT TO ACTIVITY AGREEMENT MEMBERS.

All advances of funds made pursuant to the DHCCP Activity Agreement, excluding interest paid on delinquent payments, will be repaid to each Activity Agreement Member (including an Activity Agreement Member which has withdrawn in accordance with the DHCCP Activity Agreement) making advances pursuant to the DHCCP Activity Agreement out of the proceeds of Water Authority financings and collections. Reimbursements will be made within 30 days following the completion of each financing and will include interest computed monthly at a rate equivalent to the rate available from the Local Agency Investment Fund on the date of the closing of the financing. Any interest due under the DHCCP Activity Agreement and unpaid will be deducted from the repayment.

## ORGANIZATION

The business of the DHCCP Activity Agreement will be conducted by the Steering Committee established and under the procedures set out in the DHCCP Activity Agreement.

Powers and Limitations Thereon. The Steering Committee will undertake all actions necessary for carrying out the DHCCP Activity Agreement, including but not limited to setting policy for the DHCCP Activity Agreement; developing and approving budgets for adoption by the Board of Directors of the Water Authority; determining to issue bonds, notes or other obligations in accordance with the JPA Agreement and the Joint Exercise of Powers Act (California Government Code Section 6500, et seq.); selecting the parties to be appointed by the Water Authority to serve on the executive committee of the Delta Habitation Conservation and Conveyance Program Planning Phase Memorandum of Agreement; and other actions as reasonably necessary or convenient to carry out the purposes of the DHCCP Activity Agreement. Except where the consent or approval of the Activity Agreement Members is expressly required by the DHCCP Activity Agreement, Steering Committee representatives are presumed to have authority to act for their respective entity governing bodies. The Water Authority Board of Directors will have final review and approval authority for all actions taken under the umbrella of the Water Authority, including the issuance of bonds.

Executive Director. The Executive Director of the Water Authority is authorized, consistent with the direction of the Steering Committee, to employ attorneys, engineers and other consultants, and otherwise authorize expenditure of DHCCP Activity Agreement funds within the parameters of the budget developed by the Steering Committee and approved by the Water Authority.

## TERM

The DHCCP Activity Agreement will take effect on March 1, 2009, or the earlier date it is executed by the Water Authority and at least one Activity Agreement Member, and be retroactive to cover all obligations of the Water Authority incurred under the DWR Funding Agreement. The DHCCP Activity Agreement will remain in full force and effect until it is amended, rescinded or terminated by the Water Authority and the Activity Agreement Members by unanimous written consent in the same manner as required for amendment pursuant to the DHCCP Activity Agreement; provided, that in no event will the DHCCP Activity Agreement terminate as to Financing Participants who have selected Payment Option 2 prior to the repayment of all bonds, notes or obligations incurred by the Water Authority under the DHCCP Activity Agreement.

## FUTURE FINANCIAL COMMITMENTS

From time to time as needs arise, Financing Participants, acting through the Steering Committee, may authorize additional financial commitments in the form of refinancing principal or financing additional costs to effect the purposes of the DHCCP Activity Agreement. Additional commitments must be approved by the Steering Committee, the Board of Directors of the Water Authority, and the Financing Participants who will participate in any future financing; provided, that as set forth in the DHCCP Activity Agreement, each Financing Participant who does not pay its Financing Participant Percentage of principal from the initial debt issuance 90 days prior to its maturity consents to refinancing the initial issuance of debt for purposes of the DHCCP Activity Agreement.

## ADMISSION OF NEW DHCCP ACTIVITY AGREEMENT MEMBERS

After formation of the DHCCP Activity Agreement by its execution by at least one member of the Water Authority and the Water Authority, additional parties may participate in the DHCCP Activity Agreement so long as the duly authorized officer of the member executes the DHCCP Activity Agreement or an MOU, as appropriate, prior to March 30, 2009. After March 30, 2009, new Activity Agreement Members may be admitted upon a unanimous vote of the Steering Committee and execution of all appropriate agreements; provided that no new Activity Agreement Members will be admitted if the admission would cause the Water Authority to violate any obligation of the Water Authority under bonds, notes or other obligations issued by the Water Authority for purposes of the DHCCP Activity Agreement.

## WITHDRAWAL FROM FURTHER PARTICIPATION

Activity Agreement Members may withdraw from the DHCCP Activity Agreement as provided therein. To withdraw, an Activity Agreement Member will give the Water Authority and all other Activity Agreement Members written notice of the withdrawal not less than 30 days prior to the withdrawal date.

Payment of Obligations. Withdrawal is conditioned upon the withdrawing Activity Agreement Member's payment or agreement to pay its share of all debts, liabilities and obligations of the Water Authority pursuant to the DHCCP Activity Agreement and incurred prior to the effective date of the withdrawal, including both debt service and principal under any debts, liabilities and obligations incurred under the DHCCP Activity Agreement. A withdrawing party will, within 30 days of the withdrawal date, pay all of the Activity Agreement Member's financial obligations incurred prior to the withdrawal date pursuant to the terms of the DHCCP Activity Agreement or enter into an agreement acceptable to the Water Authority providing for continuing payment of the obligations until fully paid; provided, that if a Water Authority member is deemed to have withdrawn due to its failure to timely submit Notice to Participate under the DHCCP Activity Agreement, the member will be treated as though it never became an Activity Agreement Member and will have no payment obligation.

Rights Following Withdrawal. As of the withdrawal date, all rights of participation in the DHCCP Activity Agreement will cease for the withdrawing Activity Agreement Member.

Obligations Following Withdrawal. Withdrawal will not excuse the withdrawing Activity Agreement Member's performance of obligations imposed upon that party by any judgment which has been entered by a court of competent jurisdiction or regulation to which the Water Authority or the Activity Agreement Members are subject and that arise from or are related to activities of the DHCCP Activity Agreement conducted during the period when the withdrawing Activity Agreement Member participated in the DHCCP Activity Agreement. Furthermore, the indemnification obligations set forth in the DHCCP Activity Agreement regarding the rights to contribution described in the DHCCP Activity Agreement will survive a party's withdrawal from the DHCCP Activity Agreement for activities under the DHCCP Activity Agreement conducted during the period when the withdrawing Activity Agreement Member participated in the DHCCP Activity Agreement.

## AMENDMENT

The DHCCP Activity Agreement may be amended upon written approval of any amendment by a unanimous vote of the Activity Agreement Members; provided, that the Water Authority or any Activity Agreement Member proposing an amendment will provide notice to each other Activity Agreement Member and to the Water Authority by personal delivery; U.S. mail; facsimile transmittal with written confirmation; or electronic mail with written confirmation. Notices served by U.S. mail will be deemed received 5 days following the mailing date; all other forms of notice will be deemed received on the actual date received as confirmed by proof of service, facsimile confirmation or electronic mail confirmation. Upon service of written notice upon the president or chair and manager or other chief executive officer of any Activity Agreement Member that the failure to object or consent to an amendment will result in automatic consent to the amendment, any Activity Agreement Member that fails to consent or object within sixty (60) days after consent is requested (or an alternate reasonable time as is set by the Steering Committee by action recorded in the minutes) will lose its right to consent or object to the proposed amendment.

## INDEMNIFICATION OF WATER AUTHORITY AND ITS MEMBER AGENCIES WHO ARE NOT ACTIVITY AGREEMENT MEMBERS

The Activity Agreement Members will hold the Water Authority, and each Water Authority member agency who is not an Activity Agreement Member, free and harmless from and indemnify each of them against any and all costs, losses, damages, claims and liabilities arising from the DHCCP Activity Agreement that are not the result of the negligence or willful misconduct of the party seeking indemnification. The indemnification obligation includes the obligation to defend the Water Authority, and all Water Authority member agencies which are not participants in the DHCCP Activity Agreement, at the sole expense of the Activity Agreement Members in any action or proceeding brought against the Water Authority or any Water Authority member agencies not participating in the DHCCP Activity Agreement to recover any costs, losses, damages, claims or liabilities arising from the DHCCP Activity Agreement. The costs of defense and indemnification will be shared among the Activity Agreement Members in the same percentage as each Activity Agreement Member's Participation Percentage under the then-current schedule.

## RIGHT OF CONTRIBUTION

In the event a judgment is awarded against the Water Authority or against an Activity Agreement Member to any person or entity that is not an Activity Agreement Member, which judgment is subject to the duty to defend and indemnify specified in the DHCCP Activity Agreement, the party against whom the judgment is awarded has the right to seek contribution from each remaining Activity Agreement Members in proportion to their respective Participation Percentages.

## ASSIGNMENT; BINDING ON SUCCESSORS

Except as otherwise provided in the DHCCP Activity Agreement, the rights and duties of the Activity Agreement Member may not be assigned or delegated without the written consent of the Water Authority. Any attempt to assign or delegate rights or duties in contravention of the DHCCP Activity Agreement will be null and void. Any approved assignment or delegation will be consistent with the terms of any contracts, resolutions, indemnities and other obligations of the Water Authority

then in effect. The DHCCP Activity Agreement will inure to the benefit of, and be binding upon, the successors and assigns of the Water Authority and the Activity Agreement Members.

#### CHOICE OF LAW

The DHCCP Activity Agreement will be governed by the laws of the State of California.

#### SEVERABILITY

If one or more clauses, sentences, paragraphs or provisions of the DHCCP Activity Agreement is held to be unlawful, invalid or unenforceable, the remainder of the DHCCP Activity Agreement will not be affected thereby.

#### INDENTURE OF TRUST

##### DEFINITIONS; CONTENT OF CERTIFICATES AND OPINIONS

Definitions. Unless the context otherwise requires, the terms defined in the Indenture will, for all purposes of this summary and of any supplemental Indenture and of any certificate, opinion or other document mentioned in the Indenture, have the meanings specified in the Indenture, to be equally applicable to both the singular and plural forms of any of the terms defined in the Indenture.

“Authorized Representative” means with respect to the Authority, its Executive Director or any other person designated as an Authorized Representative of the Authority by a Certificate of the Authority signed by its Executive Director and filed with the Trustee.

“Authority” means the San Luis & Delta-Mendota Water Authority, a public body corporate and politic duly organized and existing under the Joint Exercise of Powers Agreement and under the Constitution and laws of the State.

“Beneficial Owner” means any person which (i) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Notes (including persons holding Notes through nominees, depositories or other intermediaries), or (ii) is treated as the owner of any Notes for federal income tax purposes.

“Bond Counsel” means Stradling Yocca Carlson & Rauth, A Professional Corporation, or another firm of nationally recognized attorneys experienced in the issuance of obligations the interest on which is excludable from gross income under Section 103 of the Code.

“Bond Year” means the period beginning on the date of issuance of the Notes and ending on April 1, 2010, and each successive one year or, during the last period prior to maturity, shorter period thereafter until there are no Outstanding Notes.

“Business Day” means (i) a day which is not a Saturday, Sunday or legal holiday on which banking institutions in the State, or in any other state in which the Office of the Trustee is located, are closed or (ii) a day on which the New York Stock Exchange is not closed.

“Certificate,” “Direction,” “Request,” and “Requisition” of the Authority mean a written certificate, direction, request or requisition signed in the name of the Authority by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two

or more so combined will be read and construed as a single instrument. If and to the extent required by the Indenture, each such instrument will include the statements provided for in the Indenture.

“Closing Date” means the date on which the Notes are delivered to the original purchaser thereof.

“Code” means the Internal Revenue Code of 1986, as amended.

“Construction Fund” means the fund by that name established pursuant to the Indenture.

“Continuing Disclosure Certificate” means that certain Continuing Disclosure Certificate, dated April \_\_, 2009, of Westlands Water District, as amended or supplemented from time to time in accordance with the terms thereof.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the Authority and related to the authorization, issuance, sale and delivery of the Notes, including but not limited to costs of preparation and reproduction of documents, printing expenses, filing and recording fees, initial fees and charges of the Trustee and counsel to the Trustee, legal fees and charges, fees and disbursements of consultants and professionals, rating agency fees, fees and charges for preparation, execution and safekeeping of the Notes and any other cost, charge or fee in connection with the original issuance of the Notes.

“Defeasance Securities” means: (1) non-callable direct obligations of the United States of America, (2) evidences of ownership of proportionate interests in future interest and principal payments on non-callable direct obligations of the United States of America held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying non-callable direct obligations of the United States of America are not available to any person claiming through the custodian or to whom the custodian may be obligated, (3) pre-refunded municipal obligations rated “AAA” and “AAA” by S&P and Fitch, respectively, or (4) securities eligible for “AAA” defeasance under then existing criteria of S&P or any combination thereof, will be used to effect defeasance of the Notes.

“Depository” or “DTC” means The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State of New York in its capacity as securities depository for the Notes.

“DHCCP Activity Agreements” means those certain San Luis & Delta-Mendota Water Authority Delta Habitat Conservation and Conveyance Program Activity Agreements, each dated as of March 1, 2009, by and between the Authority and each Project Member, as amended from time to time.

“DWR Funding Agreement” means that certain Agreement for Funding Between the Department of Water Resources and the San Luis & Delta-Mendota Water Authority for the Costs of Environmental Analysis, Planning and Design of Delta Conservation Measures, Including Delta Conveyance Options, by and between the California Department of Water Resources and the Authority, as amended from time to time.

“Event of Default” means any of the events specified in the Indenture.

“Favorable Opinion of Counsel” means, with respect to any action the occurrence of which requires such an opinion, an unqualified opinion of counsel to the effect that such action is permitted under the Indenture, complies with the Indenture and will not adversely affect the exclusion of interest on

the Notes from gross income for purposes of federal income taxation (subject to the inclusion of any exceptions contained in the opinion delivered upon original issuance of the Notes).

“Financing Participant” has the meaning ascribed thereto in the DHCCP Activity Agreements.

“Fitch” means Fitch Ratings, or any successor thereto.

“Indenture” means the Indenture of Trust, dated as of March 1, 2009, by and between the Authority and the Trustee, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture.

“Information Services” means Financial Information, Inc.’s “Daily Called Bond Service,” 30 Montgomery Street, 10th Floor, Jersey City, New Jersey 07302, Attention: Editor; Kenny Information Services’ “Called Bond Service,” 65 Broadway, 16th Floor, New York, New York 10006; Moody’s Investors Service “Municipal and Government,” 99 Church Street, 8th Floor, New York, New York 10007, Attention: Municipal News Reports; Standard and Poor’s Corporation “Called Bond Record,” 25 Broadway, 3rd Floor, New York, New York 10004; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other services providing information with respect to called bonds as the Authority may designate in a written request delivered to the Trustee.

“Interest Account” means the account by that name in the Revenue Fund established pursuant to the Indenture.

“Interest Payment Date” means September 1, 2009, and each March 1 and September 1 thereafter.

“Investment Agreement” means an investment agreement supported by appropriate opinions of counsel with notice to S&P and Fitch.

“Joint Exercise of Powers Agreement” means that certain Amended and Restated Joint Exercise of Powers Agreement -- SAN LUIS & DELTA-MENDOTA WATER AUTHORITY, dated as of January 1, 1992 among the parties listed therein, as amended from time to time.

“Letter of Representations” means the letter of the Authority and the Trustee delivered to and accepted by the Depository on or prior to delivery of the Notes as book-entry bonds setting forth the basis on which the Depository serves as depository for such book-entry bonds, as originally executed or as it may be supplemented or revised or replaced by a letter from the Authority and the Trustee delivered to and accepted by the Depository.

“Nominee” means the nominee of the Depository, which may be the Depository, as determined from time to time pursuant to the Indenture.

“Notes” means any note or notes issued by the Authority and at any time Outstanding pursuant to the Indenture.

“Office” means with respect to the Trustee, the office of the Trustee at 350 California Street, 11th Floor, San Francisco, California, 94104, Facsimile (415) 273-2492; notwithstanding the foregoing, such other office as designated by the Trustee, except that with respect to presentation of Notes for payment or for registration of transfer and exchange, and the location of the Registration Books, such term means the corporate trust office or agency of the Trustee at which, at any particular time, its

corporate trust agency business is conducted, of Union Bank, N.A. in Los Angeles, California, or at such other or additional offices as may be specified in writing by the Trustee to the Authority.

“Opinion of Counsel” means a written opinion of counsel (including but not limited to counsel to the Authority) selected by the Authority. If and to the extent required by the provisions of the Indenture, each Opinion of Counsel will include the statements provided for in the Indenture.

“Outstanding,” when used as of any particular time with reference to Notes, means (subject to the provisions of the Indenture) all Notes theretofore, or thereupon being, authenticated and delivered by the Trustee under the Indenture except (a) Notes theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Notes with respect to which all liability of the Authority has been discharged in accordance with the Indenture, including Notes (or portions thereof) described in the Indenture; and (c) Notes for the transfer or exchange of or in lieu of or in substitution for which other Notes have been authenticated and delivered by the Trustee pursuant to the Indenture.

“Owner” or “Note Owner,” whenever used with respect to a Note, means the person in whose name the ownership of such Note is registered on the Registration Books.

“Participants” means those broker-dealers, banks and other financial institutions from time to time for which the Depository holds book-entry certificates as securities depository.

“Participating Underwriter” has the meaning ascribed thereto in the Continuing Disclosure Certificate.

“Payment Date” means the third business day prior to the related scheduled Interest Payment Date.

“Permitted Investments” means any of the following which at the time of investment are legal investments under the laws of the State for the moneys proposed to be invested therein:

(A) for all purposes, including (i) as defeasance investments in refunding escrow accounts and (ii) for the purpose of investing (and receiving premium credit for) accrued and capitalized interest: (1) cash, or (2) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America; and

(B) for all purposes other than: (i) defeasance investments in refunding escrow accounts and (ii) investing (and receiving credit for) accrued and capitalized interest: (1) obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including the Export Import Bank; Farmers Home Administration; General Services Administration; U.S. Maritime Administration; Small Business Administration; Government National Mortgage Association (GNMA); U.S. Department of Housing & Urban Development (PHA’s); and Federal Housing Administration; (2) bonds, notes or other evidences of indebtedness rated “AAA” and “Aaa” by the applicable Rating Agency issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three years; (3) U.S. dollar denominated deposit accounts, certificates of deposit, federal funds and banker’s acceptances with domestic commercial banks (including the Trustee or any of its affiliates) which have a rating on their short term certificates of deposit on the date of purchase of “A-1” or “A-1+” by S&P and “F-1” by Fitch and maturing no more than 360 days after the date of purchase (ratings on holding companies are not considered as the rating of the bank); (4) commercial paper which is rated at the time of purchase in the single highest classification, “A-1+” by S&P and “F-1” by Fitch and which matures not more than 270 days after the date of purchase; (5) investments in a money market fund rated “AAAm” or “AAAm-G” or



better by S&P, including such funds for which the Trustee or an affiliate provides investment advice or other services; (6) pre refunded municipal obligations defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice and which are rated, based on the escrow, in the highest rating category of S&P and Fitch or any successor thereto; (7) shares of beneficial interests in investments purchased by the Investment Trust of California, doing business as CalTRUST, a joint powers authority created pursuant to Section 6509.7 of the California Government Code; (8) the Local Agency Investment Fund; and (9) any Investment Agreement.

“Principal Account” means the account by that name in the Revenue Fund established pursuant to the Indenture.

“Project” means the financing of a portion of the development costs of certain water supply facilities as described in the DHCCP Activity Agreements and for which the Authority is responsible under the terms of the DWR Funding Agreement.

“Project Members” means those Financing Participants which are listed the Indenture; provided that additional Project Members may be added to the Indenture from time to time by supplementing the Indenture without an amendment to the Indenture.

“Rating” means any currently effective rating on the Notes issued by a Rating Agency.

“Rating Agencies” means Fitch and S&P.

“Rebate Fund” means the fund by that name established pursuant to the Indenture.

“Record Date” means, with respect to any Interest Payment Date, the fifteenth (15th) day of the calendar month preceding such Interest Payment Date, whether or not such day is a Business Day.

“Redemption Date” means the date fixed for an optional redemption prior to maturity of the Notes.

“Redemption Fund” means the fund by that name established pursuant to the Indenture.

“Redemption Price” means, with respect to any Note (or portion thereof), the principal amount with respect to such Note (or portion) plus the interest accrued to the applicable Redemption Date and the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Note and the Indenture.

“Registration Books” means the records maintained by the Trustee for the registration of ownership and registration of transfer of the Notes pursuant to the Indenture.

“Requisition of the Authority” means the form set forth in the Indenture, which will be signed by the Executive Director of the Authority.

“Responsible Officer of the Trustee” means any officer within the corporate trust division (or any successor group or department of the Trustee) including any vice president, assistant vice president, assistant secretary or any other officer or assistant officer of the Trustee customarily performing functions similar to those performed by the persons who at the time are such officers, respectively, with responsibility for the administration of the Indenture.

“Revenue Fund” means the fund by that name established pursuant to the Indenture.

“Revenues” means: (a) all amounts received by the Authority pursuant to or with respect to the DHCCP Activity Agreements; and (b) all interest or gain derived from the investment of amounts in any of the funds or accounts established under the Indenture.

“S&P” means Standard & Poor’s Corporation, or any successor thereto.

“Securities Depositories” means The Depository Trust Company, 55 Water Street, 50<sup>th</sup> Floor, New York, N.Y. 10041-0099, Attn: Call Notification Department, Fax (212) 855-7232; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other addresses and/or such other securities depositories as the Authority may designate in a Request of the Authority deliver to the Trustee.

“State” means the State of California.

“Supplemental Indenture” means any indenture duly authorized and entered into between the Authority and the Trustee, supplementing, modifying or amending the Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized under the Indenture.

“Tax Certificate” means the Tax Certificate dated April \_\_, 2009, concerning certain matters pertaining to the use and investment of proceeds of the Notes issued by the Authority on the date of issuance of the Notes, including any and all exhibits attached thereto.

“Trustee” means Union Bank, N.A., a national banking association organized and existing under the laws of the United States of America, or its successor, as Trustee under the Indenture as provided in the Indenture.

“Value”, which will be determined as of the end of each month, means that the value of any investments will be calculated as follows: (a) as to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times): the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination; (b) as to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times: the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments or the bid price published by a nationally recognized pricing service; (c) as to certificates of deposit and bankers acceptances: the face amount thereof, plus accrued interest; (d) as to any investment not specified above: the value thereof established by prior agreement between the Authority and the Trustee; and (e) notwithstanding the foregoing, the value of the above investments will be determined as of the end of each month by the manner currently employed by the Trustee or any other manner consistent with industry standard.

“Westlands Water District” means the Westlands Water District, a member of the Authority duly organized and existing under and by virtue of the laws of the State of California.

“Westlands Water District DHCCP Activity Agreement” means the DHCCP Activity Agreement entered into by and between the Authority and Westlands Water District.

Content of Certificates and Opinions. Every certificate or opinion provided for in the Indenture except the certificate of destruction provided for in the Indenture, with respect to compliance with any

provision of the Indenture will include (1) a statement that the person making or giving such certificate or opinion has read such provision and the definitions in the Indenture relating thereto; (2) a brief statement as to the nature and scope of the examination or investigation upon which the certificate or opinion is based; (3) a statement that, in the opinion of such person he has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion with respect to the subject matter referred to in the instrument to which his signature is affixed; (4) a statement of the assumptions upon which such certificate or opinion is based, and that such assumptions are reasonable; and (5) a statement as to whether, in the opinion of such person, such provision has been complied with.

Any such certificate or opinion made or given by an officer of the Authority may be based, insofar as it relates to legal or accounting matters, upon a certificate or opinion of or representation by counsel, unless such officer knows, or in the exercise of reasonable care should have known, that the certificate, opinion or representation with respect to the matters upon which such certificate or statement may be based, as aforesaid, is erroneous. Any such certificate or opinion made or given by counsel may be based, insofar as it relates to factual matters (with respect to which information is in the possession of the Authority) upon a certificate or opinion of or representation by an officer of the Authority, unless such counsel knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation with respect to the matters upon which such person's certificate or opinion or representation may be based, as aforesaid, is erroneous. The same officer of the Authority, or the same counsel, as the case may be, need not certify to all of the matters required to be certified under any provision of the Indenture, but different officers, counsel may certify to different matters, respectively.

Interpretation. Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and include the neuter, masculine or feminine gender, as appropriate. Headings of articles and sections in the Indenture and the table of contents thereof are solely for convenience of reference, do not constitute a part of the Indenture and do not affect the meaning, construction or effect thereof.

## THE NOTES

Registration Books. The Trustee will keep or cause to be kept, at the Office of the Trustee, sufficient records for the registration and transfer of ownership of the Notes, which will upon reasonable notice and at reasonable times be open to inspection during regular business hours by the Authority, the Project Members and the Owners; and, upon presentation for such purpose, the Trustee will, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such records, the ownership of the Notes as provided in the Indenture.

Notes Mutilated, Lost, Destroyed or Stolen. If any Note becomes mutilated, the Authority, at the expense of the Owner of the Note, will execute, and the Trustee will thereupon authenticate and deliver, a new Note of like tenor, series and authorized denomination in exchange and substitution for the Notes so mutilated, but only upon surrender to the Trustee of the Note so mutilated. Every mutilated Note so surrendered to the Trustee will be canceled by it and upon the written request of the Authority delivered to, or upon the order of, the Authority. If any note is lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Authority and the Trustee and, if such evidence be satisfactory to them and indemnity satisfactory to them is given, the Authority, at the expense of the Owner, will execute, and the Trustee will thereupon authenticate and deliver, a new Note of like tenor, series and authorized denomination in lieu of and in substitution for the Note so lost, destroyed or stolen (or if any such Note has matured or is about to mature, instead of issuing a substitute Note, the Trustee may pay the same without surrender thereof). The Authority may require payment by the Owner of a sum not exceeding the actual cost of preparing each new Note issued under the Indenture and of the expenses which may be incurred by the Authority and the Trustee in the premises. Any Note issued under the

provisions of the Indenture in lieu of any Note alleged to be lost, destroyed or stolen constitutes an original additional contractual obligation on the part of the Authority whether or not the Note so alleged to be lost, destroyed, or stolen be at any time enforceable by anyone, and will be entitled to the benefits of the Indenture with all other Notes secured by the Indenture.

Book Entry System.

(a) Election of Book Entry System. Prior to the issuance of the Notes, the Authority may provide that such Notes will be initially issued as book entry bonds. If the Authority elects to deliver any Notes in book entry form, then the Authority will cause the delivery of a separate single fully registered note (which may be typewritten) for each maturity date of such Note in an authorized denomination corresponding to that total principal amount of the Notes designated to mature on such date. Upon initial issuance, the ownership of each such Note will be registered in the Registration Books in the name of the Nominee, as nominee of the Depository and ownership of the Notes, or any portion thereof may not thereafter be transferred except as provided in the Indenture.

With respect to book entry Notes, the Authority and the Trustee have no responsibility or obligation to any Participant or to any person on behalf of which such a Participant holds an interest in such book entry Notes. Without limiting the immediately preceding sentence, the Authority and the Trustee have no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee, or any Participant with respect to any ownership interest in book entry Notes, (ii) the delivery to any Participant or any other person, other than an Owner as shown in the Registration Books, of any notice with respect to book entry Notes, including any notice of redemption, (iii) the selection by the Depository and its Participants of the beneficial interests in book entry Notes to be redeemed in the event the Authority redeems the Notes in part, or (iv) the payment by the Depository or any Participant or any other person, of any amount of principal of, premium, if any, or interest on book entry Notes. The Authority and the Trustee may treat and consider the person in whose name each book entry Note is registered in the Registration Books as the absolute Owner of such book entry Note for the purpose of payment of principal of, premium and interest on such Note, for the purpose of giving notices of redemption and other matters with respect to such Note, for the purpose of registering transfers with respect to such Note, and for all other purposes whatsoever. The Trustee will pay all principal of, premium, if any, and interest on the Notes only to or upon the order of the respective Owner, as shown in the Registration Books, or his respective attorney duly authorized in writing, and all such payments will be valid and effective to fully satisfy and discharge the Authority's obligations with respect to payment of principal of, premium, if any, and interest on the Notes to the extent of the sum or sums so paid. No person other than an Owner, as shown in the Registration Books, will receive a Note evidencing the obligation to make payments of principal of, premium, if any, and interest on the Notes. Upon delivery by the Depository to the Authority and the Trustee, of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee, and subject to the provisions of the Indenture with respect to Record Dates, the word Nominee in the Indenture refers to such nominee of the Depository.

(b) Delivery of Letter of Representations. In order to qualify the book entry Notes for the Depository's book entry system, the Authority and the Trustee will execute and deliver to the Depository a Letter of Representations. The execution and delivery of a Letter of Representations does not in any way impose upon the Authority or the Trustee any obligation whatsoever with respect to persons having interests in such book entry Notes other than the Owners, as shown on the Registration Books. By executing a Letter of Representations, the Trustee agrees to take all action necessary at all times so that the Trustee will be in compliance with all representations of the Trustee in such Letter of Representations. In addition to the execution and delivery of a Letter of Representations, the Authority

and the Trustee will take such other actions, not inconsistent with the Indenture, as are reasonably necessary to qualify book entry Notes for the Depository's book entry program.

(c) Selection of Depository. In the event (i) the Depository determines not to continue to act as securities depository for book entry Notes, or (ii) the Authority determines that continuation of the book entry system is not in the best interest of the beneficial owners of the Notes or the Authority, then the Authority will discontinue the book entry system with the Depository. If the Authority determines to replace the Depository with another qualified securities depository, the Authority will prepare or direct the preparation of a new single, separate, fully registered Note for each of the maturity dates of such book entry Notes, registered in the name of such successor or substitute qualified securities depository or its Nominee as provided in the Indenture. If the Authority fails to identify another qualified securities depository to replace the Depository, then the Notes will no longer be restricted to being registered in such Registration Books in the name of the Nominee, but will be registered in whatever name or names the Owners transferring or exchanging such Notes designate, in accordance with the provisions of the Indenture.

(d) Payments To Depository. Notwithstanding any other provision of the Indenture to the contrary, so long as all Outstanding Notes are held in book entry form and registered in the name of the Nominee, all payments of principal of, redemption premium, if any, and interest on such Note and all notices with respect to such Note will be made and given, respectively to the Nominee, as provided in the Letter of Representations or as otherwise instructed by the Depository and agreed to by the Trustee notwithstanding any inconsistent provisions in the Indenture.

(e) Transfer of Notes to Substitute Depository.

(i) The Notes will be initially issued as provided in the Indenture. Registered ownership of such Notes, or any portions thereof, may not thereafter be transferred except: (A) to any successor of DTC or its nominee, or of any substitute depository designated pursuant to clause (B) below ("Substitute Depository"); provided that any successor of DTC or Substitute Depository will be qualified under any applicable laws to provide the service proposed to be provided by it; (B) to any Substitute Depository, upon (1) the resignation of DTC or its successor (or any Substitute Depository or its successor) from its functions as depository, or (2) a determination by the Authority that DTC (or its successor) is no longer able to carry out its functions as depository; provided that any such Substitute Depository will be qualified under any applicable laws to provide the services proposed to be provided by it; or (C) to any person as provided below, upon (1) the resignation of DTC or its successor (or any Substitute Depository or its successor) from its functions as depository, or (2) a determination by the Authority that DTC or its successor (or Substitute Depository or its successor) is no longer able to carry out its functions as depository.

(ii) In the case of any transfer pursuant to clause (A) or clause (B) above, upon receipt of all Outstanding Notes by the Trustee, together with a written request of the Authority to the Trustee designating the Substitute Depository, a single new Note, which the Authority will prepare or cause to be prepared, will be issued for each maturity of Notes then Outstanding, registered in the name of such successor or such Substitute Depository or their Nominees, as the case may be, all as specified in such written request of the Authority. In the case of any transfer pursuant to clause (C) above, upon receipt of all Outstanding Notes by the Trustee, together with a written request of the Authority to the Trustee, new Notes, which the Authority will prepare or cause to be prepared, will be issued in such denominations and registered in the names of such persons as are requested in such written request of the Authority, subject to the limitations of the Indenture, provided that the Trustee is not required to deliver such new Notes within a period of less than sixty (60) days from the date of receipt of such written request from the Authority.

(iii) In the case of a partial redemption or an advance refunding of any Notes evidencing a portion of the principal maturing in a particular year, DTC or its successor (or any Substitute Depository or its successor) will make an appropriate notation on such Notes indicating the date and amounts of such reduction in principal, in form acceptable to the Trustee, all in accordance with the Letter of Representations. The Trustee is not liable for such Depository's failure to make such notations or errors in making such notations and the records of the Trustee as to the outstanding principal amount of such Notes will be controlling.

(iv) The Authority and the Trustee are entitled to treat the person in whose name any Note is registered as the Owner thereof for all purposes of the Indenture and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the Authority; and the Authority and the Trustee have no responsibility for transmitting payments to, communicating with, notifying, or otherwise dealing with any beneficial owners of the Notes. Neither the Authority nor the Trustee have any responsibility or obligation, legal or otherwise, to any such beneficial owners or to any other party, including DTC or its successor (or Substitute Depository or its successor), except to the Owner of any Notes, and the Trustee may rely conclusively on its records as to the identity of the Owners of the Notes.

#### REVENUES, FUNDS AND ACCOUNTS; PAYMENT OF PRINCIPAL AND INTEREST

Investments. All moneys in any of the funds or accounts established with the Trustee pursuant to the Indenture will be invested by the Trustee solely in Permitted Investments. Such investments will be directed by the Authority pursuant to a Request of the Authority filed with the Trustee at least two (2) Business Days in advance of the making of such investments (which directions will be promptly confirmed to the Trustee in writing). In the absence of any such directions from the Authority, the Trustee will invest any such moneys in Permitted Investments described in clause (B)(7) of the definition thereof; provided, however, that to the extent that Permitted Investments described in clause (B)(7) of the definition thereof are unavailable, the Trustee will invest any such moneys in Permitted Investments described in clause B(5) of the definition thereof. Obligations purchased as an investment of moneys in any fund are part of such fund or account.

All interest or gain derived from the investment of amounts in any of the funds or accounts established under the Indenture will be deposited in the Interest Account unless otherwise provided in the Indenture. For purposes of acquiring any investments under the Indenture, the Trustee or an affiliate may act as principal or agent in the acquisition or disposition of any investment and the Trustee may commingle funds (other than the Rebate Fund) held by it under the Indenture upon the Request of the Authority. The Trustee may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee will incur no liability for losses arising from any investments made pursuant to the Indenture.

The Authority has acknowledged that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Authority the right to receive brokerage confirmations of security transactions as they occur, the Authority specifically waives receipt of such confirmations to the extent permitted by law. The Trustee will furnish the Authority periodic cash transaction statements which include detail for all investment transactions made by the Trustee under the Indenture.

The Trustee or any of its affiliates may act as sponsor, advisor or manager in connection with any investments made by the Trustee under the Indenture.

The Authority will invest, or cause to be invested, all monies in any fund or accounts established with the Trustee as provided in the Tax Certificate.

Rebate Fund.

(a) The Trustee will establish a special fund designated the Rebate Fund. All amounts at any time on deposit in the Rebate Fund will be held by the Trustee in trust, to the extent required to satisfy the requirement to make rebate payments to the United States (the “Rebate Requirement”) pursuant to Section 148(f) of the Code and the Treasury Regulations promulgated thereunder. Such amounts will be free and clear of any lien under the Indenture and will be governed by the Indenture and by the Tax Certificate. The Trustee will be deemed conclusively to have complied with the Rebate Requirement if it follows the directions of the Authority, and will have no independent responsibility to, or liability resulting from its failure to, enforce compliance by the Authority with the Rebate Requirement.

(b) Within 45 days of the end of each Bond Year (as such term is defined in the Tax Certificate), (1) the Authority will calculate or cause to be calculated with respect to the Notes the amount that would be considered the “rebate amount” within the meaning of Section 1.148-3 of the Treasury Regulations, using as the “computation date” for such purpose the end of such Bond Year, and (2) upon the Authority’s written direction, the Trustee will deposit to the Rebate Fund from amounts on deposit in the Revenue Fund, if and to the extent required, amounts sufficient to cause the balance in the Rebate Fund to be equal to the “rebate amount” so calculated. The Trustee is not required to deposit any amount to the Rebate Fund in accordance with the preceding sentence if the amount on deposit in the Rebate Fund prior to the deposit required to be made exceeds the “rebate amount” calculated in accordance with the preceding sentence. Such excess may be withdrawn from the Rebate Fund to the extent permitted under paragraph (g) below. The Authority is not required to calculate the “rebate amount” within the meaning of Section 1.148 3 of the Treasury Regulations with respect to all or a portion of the proceeds of the Notes (including amounts treated as proceeds of the Notes) (1) to the extent such proceeds satisfy the expenditure requirements of Section 148(f)(4)(B) or Section 148(f)(4)(C) of the Code, whichever is applicable, and otherwise qualify for the exception to the Rebate Requirement pursuant to whichever of such sections is applicable, (2) to the extent such proceeds are subject to an election by the Authority under Section 148(f)(4)(C)(vii) of the Code to pay a 1½% penalty in lieu of arbitrage rebate in the event any of the percentage expenditure requirements of Section 148(f)(4)(C) are not satisfied, or (3) to the extent such proceeds qualify for the exception to arbitrage rebate under Section 148(b)(4)(A)(ii) of the Code for amounts in a “bona fide debt service fund.” In such event, and with respect to such amounts, the Authority will provide written direction to the Trustee that the Trustee is not required to deposit any amount to the Rebate Fund in accordance with the Indenture.

(c) Any funds remaining in the Rebate Fund after redemption of all of the Notes and payment of any amounts described in paragraph (d)(2) below, or provision made therefor satisfactory to the Trustee, including accrued interest and payment of any applicable fees to the Trustee, will be withdrawn by the Trustee and remitted to the Authority.

(d) Upon the Authority’s written direction, but subject to the exceptions contained in paragraph (b) above to the requirement to calculate the “rebate amount” and make deposits to the Rebate Fund, the Trustee will pay to the United States, from amounts on deposit in the Rebate Fund,

(1) not later than 60 days after the end of (i) the fifth Bond Year, and (ii) each fifth Bond Year thereafter, an amount that, together with all previous rebate payments, is equal to at least 90% of the “rebate amount” calculated as of the end of such Bond Year in accordance with Section 1.148 3 of the Treasury Regulations;

(2) not later than 60 days after the payment of all Notes, an amount equal to 100% of the “rebate amount” calculated as of the date of such payment (and any income attributable to

the rebatable arbitrage determined to be due and payable) in accordance with Section 1.148 3 of the Treasury Regulations.

(e) In the event that, prior to the time of any payment required to be made from the Rebate Fund, the amount in the Rebate Fund is not sufficient to make such payment when such payment is due, the Authority will calculate the amount of such deficiency and direct the Trustee to deposit an amount received from the Authority equal to such deficiency into the Rebate Fund prior to the time such payment is due.

(f) Each payment required to be made pursuant to paragraph (d) above will be made to the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255 on or before the date on which such payment is due, and will be accompanied by Internal Revenue Service Form 8038-T.

(g) In the event that immediately following the calculation required by paragraph (b) above, but prior to any deposit made thereunder, the amount on deposit in the Rebate Fund exceeds the "rebate amount" calculated in accordance with paragraph (b) above, upon written instructions from the Authority, the Trustee will withdraw the excess from the Rebate Fund and credit such excess to the Revenue Fund.

(h) The Authority will retain records of all determinations made under the Indenture until six years after the complete retirement of the Notes.

(i) Notwithstanding anything in the Indenture to the contrary, the Rebate Requirement will survive the payment in full or the defeasance of the Notes.

Application of Funds and Accounts When No Notes are Outstanding. On the date on which all Notes are retired under the Indenture or provision made therefor pursuant to the Indenture and after payment of all amounts due the Trustee under the Indenture, all moneys then on deposit in any of the funds or accounts (other than the Rebate Fund) established with the Trustee pursuant to the Indenture will be withdrawn by the Trustee and paid to the Authority for distribution in accordance with the DHCCP Activity Agreements.

## PARTICULAR COVENANTS

Punctual Payment. The Authority will punctually pay or cause to be paid the principal and interest to become due in respect of all the Notes, in strict conformity with the terms of the Notes and of the Indenture, according to the true intent and meaning thereof, but only out of Revenues and other moneys pledged for such payment as provided in the Indenture.

Extension of Payment of Notes. The Authority will not directly or indirectly extend or assent to the extension of the maturity of any of the Notes or the time of payment of any claims for interest by the purchase of such Notes or by any other arrangement, and in case the maturity of any of the Notes or the time of payment of any such claims for interest are extended, such Notes or claims for interest will not be entitled, in case of any default under the Indenture, to the benefits of the Indenture, except subject to the prior payment in full for the principal of all of the Notes then Outstanding and of all claims for interest thereon which have not been so extended. Nothing in the Indenture limits the right of the Authority to issue Notes for the purpose of refunding any Outstanding Notes, and such issuance does not constitute an extension of maturity of Notes.

Power to Issue Notes and Make Pledge and Assignment. The Authority is duly authorized pursuant to law to issue the Notes and to enter into the Indenture and to pledge and assign the Revenues



and other assets purported to be pledged and assigned under the Indenture in the manner and to the extent provided in the Indenture. The Notes and the provisions of the Indenture are and will be the legal, valid and binding special obligations of the Authority in accordance with their terms, and the Authority and the Trustee will at all times, subject to the provisions of the Indenture and to the extent permitted by law, defend, preserve and protect the pledge and assignment of Revenues and other assets and all the rights of the Note Owners under the Indenture against all claims and demands of all persons whomsoever.

Accounting Records and Financial Statements. The Trustee will at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with industry standards, in which complete and accurate entries will be made of all transactions made by it relating to the proceeds of Notes, the Revenues and all funds and accounts established by it pursuant to the Indenture. Such books of record and account will be available for inspection by the Authority and the Project Members upon reasonable prior notice during business hours and under reasonable circumstances.

Tax Covenants. Notwithstanding any other provision of the Indenture, absent an opinion of Bond Counsel that the exclusion from gross income for federal income tax purposes of the interest with respect to the Notes will not be adversely affected, the Authority covenants to comply with all applicable requirements of the Code necessary to preserve such exclusion from gross income and specifically covenants, without limiting the generality of the foregoing, as follows:

(a) Private Activity. The Authority will not take or omit to take action or refrain from any action or make any use of the proceeds of the Notes or of any other monies or property which would cause the Notes to be “private activity bonds” within the meaning of Section 141 of the Code;

(b) Arbitrage. The Authority will make no use of the proceeds of the Notes or of any other amounts or property, regardless of the source, or take or omit to take any action which will cause the Notes to be “arbitrage bonds” within the meaning of Section 148 of the Code;

(c) Federal Guarantee. The Authority will make no use of the proceeds of the Notes or take or omit to take any action that would cause the Notes to be “federally guaranteed” within the meaning of Section 149(b) of the Code;

(d) Information Reporting. The Authority will take or cause to be taken all necessary action to comply with the informational reporting requirement of Section 149(e) of the Code;

(e) Hedge Bonds. The Authority will make no use of the proceeds of the Notes or any other amounts or property, regardless of the source, or take or omit to take any action that would cause the Notes to be considered “hedge bonds” within the meaning of Section 149(g) of the Code unless the Authority takes all necessary action to assure compliance with the requirements of Section 149(g) of the Code to maintain the exclusion from gross income of the interest due with respect to the Notes for federal income tax purposes; and

(f) Miscellaneous. The Authority will take no action inconsistent with its expectations stated in the Tax Certificate and will comply with the covenants and requirements stated therein and incorporated by reference in the Indenture.

Payments Under DHCCP Activity Agreements. The Authority will promptly collect all amounts due from the Project Members pursuant to the sections of the DHCCP Activity Agreements described in the Indenture and, subject to the provisions of the Indenture, enforce, and take all steps, actions and proceedings which the Authority or the Trustee determines to be reasonably necessary for the enforcement of all of the obligations of the Project Members thereunder.

The Authority will not enter into any amendments to the DHCCP Activity Agreements except as permitted in the DHCCP Activity Agreements and will not enter into any amendment of the Westlands Water District DHCCP Activity Agreement without the written consent of the Trustee. The Trustee will give written consent to an amendment to the Westlands Water District DHCCP Activity Agreement only if (a) such amendment, modification or termination will not materially adversely affect the interests of the Note Owners, or (b) the Trustee first obtains the written consent of the Owners of a majority in aggregate principal amount of the Notes then Outstanding to such amendment, modification or termination.

Waiver of Laws. The Authority will not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time in force that may affect the covenants and agreements contained in the Indenture or in the Notes, and all benefit or advantage of any such law or laws is expressly waived by the Authority to the extent permitted by law.

Refunding. In the event that the Authority has not received from the Project Members amounts sufficient to pay the principal of and interest on the Notes 90 days prior to the maturity thereof, the Authority will use commercially reasonable efforts to effectuate the sale and delivery of bonds, notes or other obligations on or before the maturity date of the Notes to refund the principal portion of the Notes in excess of principal portion of the Notes for which amounts have been received from Project Members.

#### EVENTS OF DEFAULT AND REMEDIES OF NOTE OWNERS

Events of Default. The following events are Events of Default under the Indenture: (a) default by the Authority in the due and punctual payment of the principal of any Notes when and as the same becomes due and payable, whether at maturity as therein expressed, by proceedings for redemption, by acceleration, or otherwise; (b) default by the Authority in the due and punctual payment of any installment of interest on any Notes when and as the same becomes due and payable; (c) default by the Authority in the observance of any of the other covenants, agreements or conditions on its part in the Indenture or in the Notes contained, if such default continues for a period of thirty (30) days after written notice thereof, specifying such default and requiring the same to be remedied, has been given to the Authority by the Trustee or by the Owners of not less than 25 percent in aggregate principal amount of Notes Outstanding; provided, however, that if in the reasonable opinion of the Authority the default stated in the notice can be corrected, but not within such sixty (60) day period and corrective action is instituted by the Authority within such sixty (60) day period and diligently pursued in good faith until the default is corrected such default is not an Event of Default under the Indenture; or (d) the Authority files a petition or answer seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if a court of competent jurisdiction approves a petition filed with or without the consent of the Authority seeking arrangement or reorganization under the federal bankruptcy laws or any other applicable law of the United States of America or any state therein, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction assumes custody or control of the Authority or of the whole or any substantial part of its property.

Remedies Upon Event of Default. If any Event of Default occurs, then, and in each and every such case during the continuance of such Event of Default, the Trustee may, and at the written direction of the Owners of not less than a majority in aggregate principal amount of the Notes at the time Outstanding will, in each case, upon notice in writing to the Authority and the Project Members, declare the principal of all of the Notes then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same becomes and will be immediately due and payable, anything in the Indenture or in the Notes contained to the contrary notwithstanding.

Any such declaration is subject to the condition that if, at any time after such declaration and before any judgment or decree for the payment of the moneys due has been obtained or entered, the Authority or one or more Project Members deposits with the Trustee a sum sufficient to pay all the principal of and installments of interest on the Notes payment of which is overdue, with interest on such overdue principal at the rate borne by the respective Notes to the extent permitted by law, and the reasonable charges and expenses of the Trustee, and any and all other Events of Default known to the Trustee (other than in the payment of principal of and interest on the Notes due and payable solely by reason of such declaration) has been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate has been made therefor, then, and in every such case the Trustee will on behalf of the Owners of all of the Notes, rescind and annul such declaration and its consequences and waive such Event of Default; but no such rescission and annulment will extend to or affect any subsequent Event of Default, or impair or exhaust any right or power consequent thereon.

Application of Revenues and Other Funds After Default. If an Event of Default occurs and is continuing, all Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of the Indenture (other than amounts held in the Rebate Fund) will be applied by the Trustee as follows and in the following order: (a) to the payment of any expenses necessary in the opinion of the Trustee to protect the interests of the Owners of the Notes and payment of reasonable charges and expenses of the Trustee (including reasonable fees and disbursements of its counsel) incurred in and about the performance of its powers and duties under the Indenture; and (b) to the payment of the principal of and interest then due on the Notes (upon presentation of the Notes to be paid, and stamping or otherwise noting thereon of the payment if only partially paid, or surrender thereof if fully paid) in accordance with the provisions of the Indenture, in the following order of priority: First: to the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available is not sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference; Second: to the payment to the persons entitled thereto of the unpaid principal of any Notes which has become due, whether at maturity or by acceleration or redemption, with interest on the overdue principal at the rate of eight percent (8%) per annum, and, if the amount available is not sufficient to pay in full all the Notes, together with such interest, then to the payment thereof ratably, according to the amounts of principal due on such date to the persons entitled thereto, without any discrimination or preference; and Third: If there exists any remainder after the foregoing payments, such remainder will be paid to the Authority.

Trustee to Represent Note Owners. The Trustee is irrevocably appointed (and the successive respective Owners of the Notes, by taking and holding the same, will be conclusively deemed to have so appointed the Trustee) as trustee and true and lawful attorney in fact of the Owners of the Notes for the purpose of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Notes or the Indenture and applicable provisions of any other law. Upon the occurrence and continuance of an Event of Default or other occasion giving rise to a right in the Trustee to represent the Note Owners, the Trustee in its discretion may, and upon the written request of the Owners of a majority in aggregate principal amount of the Notes then Outstanding, and upon being indemnified to its satisfaction therefor, will proceed to protect or enforce its rights or the rights of such Owners by such appropriate action, suit, mandamus or other proceedings as it deems most effectual to protect and enforce any such right, at law or in equity, either for the specific performance of any covenant or agreement contained in the Indenture, or in aid of the execution of any power granted in the Indenture, or for the enforcement of any other appropriate legal or equitable right or remedy vested in the Trustee or in such Owners under the Notes or the Indenture or any other law; and upon instituting such proceeding, the Trustee will be entitled, as a matter of right, to the appointment of a receiver of the Revenues and other assets pledged under the Indenture, pending such proceedings. All rights of action under the Indenture or the Notes or otherwise may be prosecuted and enforced by the Trustee without the

possession of any of the Notes or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee will be brought in the name of the Trustee for the benefit and protection of all the Owners of such Notes, subject to the provisions of the Indenture.

Note Owners' Direction of Proceedings. Subject to the Indenture, the Owners of a majority in aggregate principal amount of the Notes then Outstanding will have the right, by an instrument or concurrent instruments in writing issued to the Trustee, and upon indemnification of the Trustee to its reasonable satisfaction, to direct the method of conduct in all remedial proceedings taken by the Trustee under the Indenture, provided that such direction will not be otherwise than in accordance with law and the provisions of the Indenture, and that the Trustee has the right to decline to follow any such direction which in the opinion of the Trustee would be unjustly prejudicial to Note Owners not parties to such direction.

Suit by Owners. No Owner of any Notes has the right to institute any suit, action or proceeding at law or in equity, for the protection or enforcement of any right or remedy under the Indenture, the DHCCP Activity Agreements, Joint Exercise of Powers Agreement or any other applicable law with respect to such Notes, unless (a) such Owners have given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of not less than twenty five percent (25%) in aggregate principal amount of the Notes then Outstanding has made written request upon the Trustee to exercise the powers granted in the Indenture or to institute such suit, action or proceeding in its own name; (c) such Owner or Owners have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee has failed to comply with such request for a period of sixty (60) days after such written request has been received by, and the tender of indemnity has been made to, the Trustee; (e) no direction inconsistent with such written request has been given to the Trustee during such sixty (60) day period by the Owners of a majority in aggregate principal amount of the Notes then Outstanding.

Such notification, request, tender of indemnity and refusal or omission are declared, in every case, to be conditions precedent to the exercise by any Owner of Notes of any remedy under the Indenture or under law; it being understood and intended that no one or more Owners of Notes have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of the Indenture or the rights of any other Owners of Notes, or to enforce any right under the Notes, the Indenture, the DHCCP Activity Agreements, the Joint Exercise of Powers Agreement or other applicable law with respect to the Notes, except in the manner provided in the Indenture, and that all proceedings at law or in equity to enforce any such right will be instituted, had and maintained in the manner provided in the Indenture and for the benefit and protection of all Owners of the Outstanding Notes, subject to the provisions of the Indenture.

Absolute Obligation of Authority. Nothing in the Indenture or in any other provision of the Indenture or in the Notes contained will affect or impair the obligation of the Authority, which is absolute and unconditional, to pay the principal of and interest on the Notes to the respective Owners of the Notes at their respective dates of maturity, or upon call for redemption, as provided in the Indenture, but only out of the Revenues and other assets pledged in the Indenture therefor, or affect or impair the right of such Owners, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Notes.

Remedies Not Exclusive. No remedy conferred upon or reserved to the Trustee or to the Owners of the Notes is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, will be cumulative and in addition to any other remedy given under the Indenture or now or later existing at law or in equity or otherwise.

No Waiver of Default. No delay or omission of the Trustee or of any Owner of the Notes to exercise any right or power arising upon the occurrence of any Event of Default will impair any such right or power or will be construed to be a waiver of any such Event of Default or an acquiescence therein.

## THE TRUSTEE

### Duties, Immunities and Liabilities of Trustee.

(a) The Trustee will, prior to an Event of Default, and after the curing of all Events of Default which may have occurred, perform such duties and only such duties as are expressly and specifically set forth in the Indenture and no implied covenants or duties will be read into the Indenture against the Trustee. The Trustee will, during the existence of any Event of Default (which has not been cured), exercise such of the rights and powers vested in it by the Indenture, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) The Authority may remove the Trustee at any time, unless an Event of Default has occurred and then be continuing, and will remove the Trustee if at any time requested to do so by an instrument or concurrent instruments in writing signed by the Owners of not less than a majority in aggregate principal amount of the Notes then Outstanding (or their attorneys duly authorized in writing) or if at any time the Trustee ceases to be eligible in accordance with the Indenture, or becomes incapable of acting, or is adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property is appointed, or any public officer takes control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, in each case by giving written notice of such removal to the Trustee and thereupon will promptly appoint a successor Trustee by an instrument in writing.

(c) The Trustee may at any time resign by giving written notice of such resignation to the Authority, and by giving the Note Owners notice of such resignation by mail at the addresses shown on the Registration Books. Upon receiving such notice of resignation, the Authority will promptly appoint a successor Trustee by an instrument in writing.

(d) Any removal or resignation of the Trustee and appointment of a successor Trustee will become effective upon acceptance of appointment by the successor Trustee. If no successor Trustee has been appointed and has accepted appointment within forty five (45) days of giving notice of removal or notice of resignation as aforesaid, the resigning Trustee or any Note Owner (on behalf of himself and all other Note Owners) may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under the Indenture will signify its acceptance of such appointment by executing and delivering to the Authority and to its predecessor Trustee a written acceptance thereof, and thereupon such successor Trustee, without any further act, deed or conveyance, will become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee; but, nevertheless at the Request of the Authority or the request of the successor Trustee, such predecessor Trustee will execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to any property held by it under the Indenture and will pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions set forth in the Indenture. Upon request of the successor Trustee, the Authority will execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of

appointment by a successor Trustee as provided in the Indenture, the Authority will mail or cause the successor trustee to mail a notice of the succession of such Trustee to the trusts under the Indenture to each rating agency which is then rating the Notes and to the Note Owners at the addresses shown on the Registration Books. If the Authority fails to mail such notice within fifteen (15) days after acceptance of appointment by the successor Trustee, the successor Trustee will cause such notice to be mailed at the expense of the Authority.

(e) Any Trustee appointed under the provisions of the Indenture in succession to the Trustee must be a trust company, banking association or bank having the powers of a trust company having a corporate trust office in California, having a combined capital and surplus of at least Seventy-Five Million Dollars (\$75,000,000), and subject to supervision or examination for federal or state authority. If such bank, banking association, or trust company publishes a report of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then for the purpose of the Indenture the combined capital and surplus of such bank, banking association, or trust company will be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee ceases to be eligible in accordance with the provisions of the Indenture, the Trustee will resign immediately in the manner and with the effect specified in the Indenture.

Merger or Consolidation. Any bank or trust company into which the Trustee may be merged or converted or with which it may be consolidated or any bank or trust company resulting from any merger, conversion or consolidation to which it is a party or any bank or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank or trust company is eligible under the Indenture will be the successor to such Trustee, without the execution or filing of any paper or any further act, anything in the Indenture to the contrary notwithstanding.

Liability of Trustee.

(a) The recitals of facts in the Indenture and in the Notes will be taken as statement of the Authority, and the Trustee does not assume responsibility for the correctness of the same, or make any representations as to the validity or sufficiency of the Indenture, the Notes, the DHCCP Activity Agreements, nor will the Trustee incur any responsibility in respect thereof, other than as expressly stated in the Indenture in connection with the respective duties or obligations in the Indenture or in the Notes assigned to or imposed upon it. The Trustee will, however, be responsible for its representations contained in its certificate of authentication on the Notes. The Trustee is not liable in connection with the performance of its duties under the Indenture, except for its own negligence or willful misconduct. The Trustee may become the Owner of Notes with the same rights it would have if it were not Trustee, and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Note Owners, whether or not such committee represents the Owners of a majority in principal amount of the Notes then Outstanding.

(b) The Trustee will not be liable for any error of judgment made in good faith by a responsible officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.

(c) The Trustee will not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Owners of not less than a majority (or such other percentage provided for in the Indenture) in aggregate principal amount of the Notes at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under the Indenture.

(d) The Trustee will not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by the Indenture.

(e) The Trustee will not be deemed to have knowledge of any Default or Event of Default under the Indenture or under a DHCCP Activity Agreement or any other event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default under the Indenture, or under a DHCCP Activity Agreement unless and until a Responsible Officer of the Trustee has actual knowledge of such event or the Trustee has been notified in writing, in accordance with the Indenture, of such event by the Authority or the Owners of not less than 25% of the Notes then Outstanding. Except as otherwise expressly provided in the Indenture, the Trustee is not bound to ascertain or inquire as to the performance or observance by the Authority or a Project Member of any of the terms, conditions, covenants or agreements in the Indenture under a DHCCP Activity Agreement, of any of the documents executed in connection with the Notes, or as to the existence of an Event of Default thereunder or an event which would, with the giving of notice, the passage of time, or both, constitute an Event of Default thereunder. The Trustee is not responsible for the validity, effectiveness or priority of any collateral given to or held by it.

(f) No provision of the Indenture requires the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of its duties under the Indenture, or in the exercise of any of its rights or powers.

(g) The Trustee is under no obligation to exercise any of the rights or powers vested in it by the Indenture at the request or direction of Owners pursuant to the Indenture, unless such Owners have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction. No permissive power, right or remedy conferred upon the Trustee under the Indenture will be construed to impose a duty to exercise such power, right or remedy.

(h) Whether or not expressly so provided in the Indenture, every provision of the Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of the Indenture.

(i) The Trustee has no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Notes.

(i) The immunities extended to the Trustee also extend to its directors, officers, employees and agents.

(k) The Trustee may execute any of the trusts or powers of the Indenture and perform any of its duties through attorneys, agents and receivers and is not answerable for the conduct of the same if appointed by it with reasonable care.

(l) The Trustee agrees to accept and act upon facsimile transmission of written instructions or directions pursuant to the Indenture provided, however, that: (a) subsequent to such facsimile transmission of written instructions or directions the Trustee will forthwith receive the originally executed instructions or directions, (b) such originally executed instructions or directions must be signed by a person as may be designated and authorized to sign for the party signing such instructions or directions, and (c) the Trustee has received a current incumbency certificate containing the specimen signature of such designated person.

(m) The Trustee will not be considered in breach of or in default in its obligations under the Indenture or progress in respect thereto in the event of enforced delay (“unavoidable delay”) in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, Acts of God or of the public enemy or terrorists, acts of a government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, earthquakes, explosion, mob violence, riot, inability to procure or general sabotage or rationing of labor, equipment, facilities, source of energy, material or supplies in the open market, litigation or arbitration involving a party or others relating to zoning or other governmental action or inaction pertaining to the Project, malicious mischief, condemnation, and unusually severe weather or delays of suppliers or subcontractors due to such causes or any similar event or occurrences beyond the control of the Trustee.

Right to Rely on Documents. The Trustee will be protected in acting upon any notice, resolution, requisition, request, consent, order, certificate, report, opinion, notes or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties. The Trustee may consult with counsel, who may be counsel of or to the Authority, with regard to legal questions, and the opinion of such counsel will be full and complete authorization and protection in respect of any action taken or suffered by it under the Indenture in good faith and in accordance therewith.

The Trustee may treat the Owners of the Notes appearing in the Registration Books as the absolute owners of the Notes for all purposes and the Trustee will not be affected by any notice to the contrary.

Whenever in the administration of the trusts imposed upon it by the Indenture the Trustee deems it necessary or desirable that a matter be proved or established prior to taking or suffering any action under the Indenture, such matter (unless other evidence in respect thereof is specifically prescribed in the Indenture) may be conclusively proved and established by a Certificate, Request or Requisition of the Authority, and such Certificate, Request or Requisition will be full warrant to the Trustee for any action taken or suffered in good faith under the provisions of the Indenture in reliance upon such Certificate, Request or Requisition, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as it may deem reasonable.

Preservation and Inspection of Documents. All documents received by the Trustee under the provisions of the Indenture will be retained in their respective possession and will be subject at all reasonable times to the inspection of the Authority, each Project Member and any Note Owner, and their agents and representatives duly authorized in writing, at reasonable hours and under reasonable conditions.

Compensation and Indemnification. To the extent permitted by law, the Authority will pay to the Trustee from time to time all reasonable compensation for all services rendered under the Indenture, and also all reasonable expenses, charges, legal and consulting fees and other disbursements and those of their attorneys, agents and employees, incurred in and about the performance of their powers and duties under the Indenture.

The Authority will indemnify, defend and hold harmless the Trustee, its officers, employees, directors and agents from and against any loss, costs, claims, liability or expense (including fees and expenses of its attorneys and advisors) incurred without negligence or bad faith on its part, arising out of or in connection with the execution of the Indenture, acceptance or administration of the trust under the Indenture, including costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers under the Indenture. The rights of the Trustee and



the obligations of the Authority under the Indenture will survive removal or resignation of the Trustee under the Indenture or the discharge of the Notes and the Indenture.

## MODIFICATION OR AMENDMENT OF THE INDENTURE

### Amendments Permitted.

(a) The Indenture and the rights and obligations of the Authority and of the Owners of the Notes and of the Trustee may be modified or amended from time to time and at any time by an indenture or indentures supplemental thereto, which the Authority and the Trustee may enter into when written consent of the Owners of a majority in aggregate principal amount of all Notes then Outstanding has been filed with the Trustee. No such modification or amendment may (1) extend the fixed maturity of any Notes, or reduce the amount of principal thereof or premium (if any) thereon, or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the Owner of each Note so affected, or (2) reduce the aforesaid percentage of Notes the consent of the Owners of which is required to affect any such modification or amendment, or permit the creation of any lien on the Revenues and other assets pledged under the Indenture prior to or on a parity with the lien created by the Indenture except as permitted in the Indenture, or deprive the Owners of the Notes of the lien created by the Indenture on such Revenues and other assets except as permitted in the Indenture, without the consent of the Owners of all of the Notes then Outstanding. It will not be necessary for the consent of the Note Owners to approve the particular form of any Supplemental Indenture, but it will be sufficient if such consent approves the substance thereof. Promptly after the execution by the Authority and the Trustee of any Supplemental Indenture pursuant to the Indenture, the Trustee will mail a notice, setting forth in general terms the substance of such Supplemental Indenture, to each Rating Agency and the Owners of the Notes at the respective addresses shown on the Registration Books. Any failure to give such notice, or any defect therein, will not, however, in any way impair or affect the validity of any such Supplemental Indenture.

(b) The Indenture and the rights and obligations of the Authority, the Trustee and the Owners of the Notes may also be modified or amended from time to time and at any time by a Supplemental Indenture, which the Authority and the Trustee may enter into without the consent of any Note Owners, only if the Trustee receives an opinion of Bond Counsel to the effect that the provisions of such Supplemental Indenture will not materially adversely affect the interests of the Owners of the Outstanding Notes, including, without limitation, for any one or more of the following purposes:

(1) to add to the covenants and agreements of the Authority in the Indenture contained other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Notes (or any portion thereof), or to surrender any right or power reserved to or conferred upon the Authority under the Indenture;

(2) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission, or of curing or correcting any defective provision, contained in the Indenture, or in regard to matters or questions arising under the Indenture, as the Authority may deem necessary or desirable;

(3) to modify, amend or supplement the Indenture in such manner as to permit the qualification of the Indenture under the Trust Indenture Act of 1939, as amended, or any similar federal statute under the Indenture in effect, and to add such other terms conditions and provisions as may be permitted by such act or similar federal statute; or

(4) to modify, amend or supplement the Indenture in such manner as to cause interest on the Notes to remain excludable from gross income under the Code.

(c) The Trustee may in its discretion, but is not obligated to, enter into any such Supplemental Indenture authorized by the Indenture which materially adversely affects the Trustee's own rights, duties or immunities under the Indenture or otherwise.

(d) Prior to the Trustee entering into any Supplemental Indenture under the Indenture, there will be delivered to the Trustee an opinion of Bond Counsel stating, in substance, that such Supplemental Indenture has been adopted in compliance with the requirements of the Indenture and that the adoption of such Supplemental Indenture will not, in and of itself, adversely affect the exclusion of interest on the Notes from federal income taxation and from state income taxation.

(e) The addition of additional Project Members under the Indenture does not constitute an amendment to the Indenture or a Supplemental Indenture.

Effect of Supplemental Indenture. Upon the execution of any Supplemental Indenture pursuant to the Indenture, the Indenture will be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under the Indenture of the Authority, the Trustee and all Owners of Notes Outstanding will thereafter be determined, exercised and enforced thereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture will be deemed to be part of the terms and conditions of the Indenture for any and all purposes.

Endorsement of Notes; Preparation of New Notes. Notes delivered after the execution of any Supplemental Indenture pursuant to the Indenture may, and if the Trustee so determines will, bear a notation by endorsement or otherwise in form approved by the Authority and the Trustee as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand on the Owner of any Notes Outstanding at the time of such execution and presentation of his or her Notes for the purpose at the Office of the Trustee or at such additional offices as the Trustee may select and designate for that purpose, a suitable notation will be made on such Notes. If the Supplemental Indenture so provides, new Notes so modified as to conform, in the opinion of the Authority and the Trustee, to any modification or amendment contained in such Supplemental Indenture, will be prepared and executed by the Authority and authenticated by the Trustee, and upon demand on the Owners of any Notes then Outstanding will be exchanged at the Office of the Trustee, without cost to any Note owner, for Notes then Outstanding, upon surrender for cancellation of such Notes, in equal aggregate principal amount of the same maturity.

Amendment of Particular Notes. The provisions of the Indenture do not prevent any Note Owner from accepting any amendment as to the particular Notes held by him.

## DEFEASANCE

Discharge of Indenture. The Notes may be paid by the Authority in any of the following ways, provided that the Authority also pays or causes to be paid any other sums payable under the Indenture by the Authority: (a) by paying or causing to be paid the principal of and interest and redemption premiums (if any) on the Notes, as and when the same become due and payable; (b) by depositing with the Trustee, in trust, at or before maturity, money or securities in the necessary amount (as provided in the Indenture) to pay or redeem all Notes then Outstanding; or (c) by delivering to the Trustee, for cancellation by it, all of the Notes then Outstanding.

If the Authority also pays or causes to be paid all other sums payable under the Indenture by the Authority, then and in that case, at the election of the Authority (evidenced by a Certificate of the Authority, filed with the Trustee, signifying the intention of the Authority to discharge all such indebtedness and the Indenture), and notwithstanding that any Notes have not been surrendered for payment, the Indenture and the pledge of Revenues and other assets made under the Indenture and all covenants, agreements and other obligations of the Authority under the Indenture will cease, terminate, become void and be completely discharged and satisfied. In such event, upon the Request of the Authority, the Trustee will execute and deliver to the Authority all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee will pay over, transfer, assign or deliver all moneys or securities or other property held by it pursuant to the Indenture which are not required for the payment or redemption of Notes not theretofore surrendered for such payment or redemption to the Authority.

Discharge of Liability on Notes. Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided in the Indenture) to pay or redeem any Outstanding Notes (whether upon or prior to the maturity or the redemption date of such Notes), provided that, if such Outstanding Notes are to be redeemed prior to maturity, notice of such redemption will be given as provided in the Indenture or provisions satisfactory to the Trustee have been made for the giving of such notice, then all liability of the Authority in respect of such Notes will cease, terminate and be completely discharged, and the Owners thereof will thereafter be entitled only to payment out of such money or securities deposited with the Trustee as aforesaid for their payment, subject however, to the provisions of the Indenture.

The Authority may at any time surrender to the Trustee for cancellation by it any Notes previously issued and delivered, which the Authority may have acquired in any manner whatsoever, and such Notes, upon such surrender and cancellation, will be deemed to be paid and retired.

Deposit of Money or Securities with Trustee. Whenever in the Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Notes, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to the Indenture and will be:

(a) lawful money of the United States of America in an amount equal to the principal amount of such Notes and all unpaid interest thereon to maturity, except that, in the case of Notes which are to be redeemed prior to maturity and in respect of which notice of such redemption has been given as provided in the Indenture or provisions satisfactory to the Trustee have been made for the giving of such notice, the amount to be deposited or held will be the principal amount of such Notes and all unpaid interest and premium, if any, thereon to the redemption date; or

(b) Defeasance Securities the principal of and interest on which when due will provide money sufficient to pay the principal of and all unpaid interest to maturity, or to the redemption date (with premium, if any), as the case may be, on the Notes to be paid or redeemed, as such principal, interest and premium, if any, become due, provided that in the case of Notes which are to be redeemed prior to the maturity thereof, notice of such redemption has been given as provided in the Indenture or provision satisfactory to the Trustee has been made for the giving of such notice; provided, in each case, that (i) the Trustee will be irrevocably instructed (by the terms of the Indenture or by Request of the Authority) to apply such money to the payment of such principal, interest and premium, if any, with respect to such Notes; and (ii) the Authority will deliver to the Trustee an opinion of Bond Counsel addressed to the Authority and Trustee, to the effect that such Notes have been discharged in accordance with the Indenture.

Payment of Notes After Discharge of Indenture. Notwithstanding any provisions of the Indenture, any moneys held by the Trustee in trust for the payment of the principal of, or interest on, any Notes and remaining unclaimed for two (2) years after the principal of all of the Notes has become due and payable (whether at maturity or upon call for redemption or by acceleration as provided in the Indenture), if such moneys were so held at such date, or two (2) years after the date of deposit of such moneys if deposited after such date when all of the Notes became due and payable, will be repaid to the Authority free from the trusts created by the Indenture upon receipt of an indemnification agreement acceptable to the Authority and the Trustee indemnifying the Trustee with respect to claims of Owners of Notes which have not yet been paid, and all liability of the Trustee with respect to such moneys will thereupon cease; provided, however, that before the repayment of such moneys to the Authority as aforesaid, the Trustee will at the written direction of the Authority (at the cost of the Authority) first mail to the Owners of Notes which have not yet been paid, at the addresses shown on the Registration Books, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Notes so payable and not presented and with respect to the provisions relating to the repayment to the Authority of the moneys held for the payment thereof.

#### MISCELLANEOUS

Liability of Authority Limited to Revenues. Notwithstanding anything in the Indenture or the Notes, the Authority is not required to advance any moneys derived from any source other than the Revenues and other moneys pledged under the Indenture for any of the purposes in the Indenture mentioned, whether for the payment of the principal of or interest on the Notes or for any other purpose of the Indenture. Nevertheless, the Authority may, but will not be required to, advance for any of the purposes of the Indenture any funds of the Authority which may be made available to it for such purposes.

The Notes are not a debt of the members of the Authority, the State of California or any of its political subdivisions (other than the Authority) and neither the members of the Authority, the State of California nor any of its political subdivisions (other than the Authority) is liable under the Indenture. In no event will the Notes be payable out of any funds or properties of the Authority other than the Revenues and other amounts pledged under the Indenture. No Project Members will have any liability or obligation with respect to amounts payable under the DHCCP Activity Agreements except with respect to payments to be made pursuant to the DHCCP Activity Agreement executed by such Project Member. The Notes do not constitute an indebtedness of the Authority in contravention of any constitutional or statutory debt limit or restriction.

Successor Is Deemed Included in All References to Predecessor. Whenever in the Indenture either the Authority or the Trustee is named or referred to, such reference includes the successors or assigns thereof, and all the covenants and agreements in the Indenture contained by or on behalf of the Authority or the Trustee will bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Limitation of Rights to Parties and Note Owners. Nothing in the Indenture or in the Notes expressed or implied is intended or will be construed to give to any person other than the Authority, the Trustee, the Project Members and the Owners of the Notes, any legal or equitable right, remedy or claim under or in respect of the Indenture or any covenant, condition or provision therein contained or contained in the Indenture; and all such covenants, conditions and provisions are for the sole and exclusive benefit of the Authority, the Trustee, the Project Members and the Owners of the Notes.

Waiver of Notice; Requirement of Mailed Notice. Whenever in the Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled

to receive such notice and in any such case the giving or receipt of such notice is not a condition precedent to the validity of any action taken in reliance upon such waiver. Whenever in the Indenture any notice is required to be given by mail, such requirement will be satisfied by the deposit of such notice in the United States mail, postage prepaid, by first class mail.

Destruction of Notes. Whenever in the Indenture provision is made for the cancellation by the Trustee and the delivery to the Authority of any Notes, the Trustee will destroy such Notes as may be allowed by law, and deliver a certificate of such destruction to the Authority.

Severability of Invalid Provisions. If any one or more of the provisions contained in the Indenture or in the Notes are for any reason held to be invalid, illegal or unenforceable in any respect, then such provision or provisions will be severable from the remaining provisions contained in the Indenture and such invalidity, illegality or unenforceability will not affect any other provision of the Indenture, and the Indenture will be construed as if such invalid or illegal or unenforceable provision had never been contained in the Indenture. The Authority declares that it would have entered into the Indenture and each and every other section, paragraph, sentence, clause or phrase thereof and authorized the issuance of the Notes pursuant thereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases of the Indenture may be held illegal, invalid or unenforceable.

Evidence of Rights of Note Owners. Any request, consent or other instrument required or permitted by the Indenture to be signed and executed by Note Owners may be in any number of concurrent instruments of substantially similar tenor and will be signed or executed by such Note Owners in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the holding by any person of Notes transferable by delivery, will be sufficient for any purpose of the Indenture and will be conclusive in favor of the Trustee and the Authority if made in the manner provided in the Indenture.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

The Ownership of Notes will be proved by the Registration Books.

Any request, consent, or other instrument or writing of the Owner of any Note will bind every future Owner of the same Note and the Owner of every Note issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in accordance therewith or reliance thereon.

Disqualified Notes. In determining whether the Owners of the requisite aggregate principal amount of Notes have concurred in any demand, request, direction, consent or waiver under the Indenture, Notes which are known by the Trustee to be owned or held by or for the account of the Authority, or by any other obligor on the Notes, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or any other obligor on the Notes, will be disregarded and not Outstanding for the purpose of any such determination. Notes so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of the Indenture if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to vote such Notes and that the pledgee is not a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or any other obligor on the Notes. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel will be full

protection to the Trustee. Upon request the Authority will certify to the Trustee those Notes that are disqualified pursuant to the Indenture.

Money Held for Particular Notes. The money held by the Trustee for the payment of the interest, principal or premium due on any date with respect to particular Notes (or portions of Notes in the case of registered Notes redeemed in part only) will, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of the Notes entitled thereto, subject, however, to the provisions of the Indenture but without any liability for interest thereon.

Funds and Accounts. Any fund or account required by the Indenture to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds and accounts will at all times be maintained in accordance with industry standards to the extent practicable, and with due regard for the requirements of the Indenture and for the protection of the security of the Notes and the rights of every Owner thereof.

Waiver of Personal Liability. No member, officer, agent, employee, consultant or attorney of the Authority or a Project Member will be individually or personally liable for the payment of the principal of or premium or interest on the Notes or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing in the Indenture relieves any such member, officer, agent, employee, consultant or attorney from the performance of any official duty provided by law or by the Indenture.

CUSIP Numbers. Neither the Trustee nor the Authority will be liable for any defect or inaccuracy in the CUSIP number that appears on any Note or in any redemption notice. The Trustee may, in its discretion, include in any redemption notice a statement to the effect that the CUSIP numbers on the Notes have been assigned by an independent service and are included in such notice solely for the convenience of the Note Owners and that neither the Authority nor the Trustee will be liable for any inaccuracies in such numbers.

Choice of Law. THE INDENTURE WILL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA.

## APPENDIX C

### PROPOSED FORM OF OPINION OF BOND COUNSEL

*Upon execution and delivery of the Notes, Stradling Yocca Carlson & Rauth, a Professional Corporation, Special Counsel, proposes to render its final approving opinion in substantially the following form:*

April \_\_, 2009

San Luis & Delta-Mendota Water Authority  
P.O. Box 2157  
Los Baños, California 93635

Members of the Board of Directors:

We have examined a certified copy of the record of the proceedings of the San Luis & Delta-Mendota Water Authority (the "Authority") relative to the issuance and sale of the \$\_\_\_\_\_ Revenue Notes (DHCCP Development Project), Series 2009A, dated the date hereof (the "Notes"), and such other information and documents as we consider necessary to render this opinion. In rendering this opinion, we have relied upon certain representations of fact and certifications made by the Authority, the initial purchaser of the Notes and others. We have not undertaken to verify through independent investigation the accuracy of the representations and certifications relied upon by us.

The Notes are being issued pursuant to an Indenture of Trust (the "Indenture"), dated as of March 1, 2009, by and between the Authority and Union Bank, N.A., as trustee (the "Trustee"). The Notes mature on the date and in the amount referenced in the Indenture. The Notes are dated their date of delivery and bear interest payable at maturity, at the rate per annum referenced in the Indenture. The Notes are registered in the form set forth in the Indenture.

Based on our examination as Bond Counsel of existing law, certified copies of such legal proceedings and such other proofs as we deem necessary to render this opinion, we are of the opinion, as of the date hereof and under existing law, that:

1. The proceedings of the Authority show lawful authority for the issuance and sale of the Notes under the laws of the State of California now in force, and the Indenture has been duly authorized, executed and delivered by the Authority, and, assuming due authorization, execution and delivery by the Trustee, as appropriate, the Notes and the Indenture are valid and binding obligations of the Authority enforceable against the Authority in accordance with their terms.

2. The obligation of the Authority to make the payments of principal of and interest on the Notes from Revenues (as defined in the Indenture) is an enforceable obligation of the Authority and does not constitute an indebtedness of the Authority in contravention of any constitutional or statutory debt limit or restriction.

3. Under existing statutes, regulations, rulings and judicial decisions, and assuming the accuracy of certain representations and compliance with certain covenants and requirements described herein, interest on the Notes is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of calculating the federal alternative minimum tax imposed on

individuals and corporations. It should be noted that, with respect to corporations, such interest will not be included as an adjustment in the calculation of alternative minimum taxable income.

4. Interest on the Notes is exempt from State of California personal income tax.

The opinions expressed herein as to the exclusion from gross income of interest on the Notes are based upon certain representations of fact and certifications made by the Authority and are subject to the condition that the Authority comply with all requirements of the Internal Revenue Code of 1986, as amended (the "Code"), that must be satisfied subsequent to the issuance of the Notes to assure that such interest on the Notes will not become includable in gross income for federal income tax purposes. Failure to comply with such requirements of the Code might cause interest on the Notes to be included in gross income for federal income tax purposes retroactive to the date of issuance of the Notes. The Authority has covenanted to comply with all such requirements.

The opinions expressed herein may be affected by actions taken (or not taken) or events occurring (or not occurring) after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions or events are taken or do occur. The Indenture and the Tax Certificate permit certain actions to be taken or to be omitted if a favorable opinion of Bond Counsel is provided with respect thereto. No opinion is expressed herein as to the effect on the exclusion from gross income of interest on the Notes for federal income tax purposes with respect to any Note if any such action is taken or omitted based upon the opinion or advice of counsel other than ourselves. Other than expressly stated herein, we express no other opinion regarding tax consequences with respect to the Notes.

The opinions expressed herein are based upon our analysis and interpretation of existing laws, regulations, rulings and judicial decisions and cover certain matters not directly addressed by such authorities. We call attention to the fact that the rights and obligations under the Indenture and the Notes are subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws affecting creditors' rights, to the application of equitable principles if equitable remedies are sought, to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State of California.

We are admitted to the practice of law only in the State of California and our opinion is limited to matters governed by the laws of the State of California and federal law. We assume no responsibility with respect to the applicability or the effect of the laws of any other jurisdiction.

We express no opinion herein as to the accuracy, completeness or sufficiency of the Official Statement relating to the Notes or other offering material relating to the Notes and expressly disclaim any duty to advise the owners of the Notes with respect to matters contained in the Official Statement.

Respectfully submitted,



## APPENDIX D

### INFORMATION CONCERNING WESTLANDS WATER DISTRICT

*The information contained in this Appendix D has been prepared by Westlands Water District (the "District") for inclusion in this Official Statement. The San Luis & Delta-Mendota Water Authority (the "Authority") has not reviewed this information and the Authority makes no representation with respect to the accuracy or completeness thereof or as to the absence of material adverse changes subsequent to the date of the Official Statement.*

*The District maintains a website. However, the information presented there is not part of this Official Statement and should not be relied upon in making an investment decision with respect to the Notes.*

**CERTAIN STATEMENTS CONTAINED IN THIS APPENDIX D REFLECT NOT HISTORICAL FACTS BUT FORECASTS AND "FORWARD-LOOKING STATEMENTS." NO ASSURANCE CAN BE GIVEN THAT THE FUTURE RESULTS DISCUSSED HEREIN WILL BE ACHIEVED, AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THE FORECASTS DESCRIBED HEREIN. IN THIS RESPECT, THE WORDS "ESTIMATE," "PROJECT," "ANTICIPATE," "EXPECT," "INTEND," "BELIEVE" AND SIMILAR EXPRESSIONS ARE INTENDED TO IDENTIFY FORWARD-LOOKING STATEMENTS. ALL PROJECTIONS, FORECASTS, ASSUMPTIONS, EXPRESSIONS OF OPINIONS, ESTIMATES AND OTHER FORWARD-LOOKING STATEMENTS ARE EXPRESSLY QUALIFIED IN THEIR ENTIRETY BY THE CAUTIONARY STATEMENTS SET FORTH IN THIS APPENDIX D.**

## THE DISTRICT

### General

The District is a California water district duly organized and existing under the California Water District Law (codified at Division 13 of the California Water Code) (the "Law"). The District has the powers under the Law to, among other things, provide water service within its water service area. The District is located on the west side of the San Joaquin Valley and includes approximately 614,700 acres in Fresno and Kings Counties of which approximately 568,500 acres are irrigable. The District currently provides agricultural water service to approximately 700 water users through over 3,460 meters and municipal and industrial water to approximately 205 users.

The District was formed in 1952 under the California Water District Law, Division 13 of the California Water Code, for the purpose of furnishing irrigation water and drainage service to farmers within the District. The District has operated continuously since its formation and in 1965 was merged with the Westplains Water Storage District.

### District Powers

The District has broad general powers under the Law to perform all necessary or proper acts, including but not limited to the authority to acquire, plan, construct, maintain, improve, operate and repair necessary works for the transmission and distribution of water for irrigation and other purposes and for any drainage or reclamation of such water; the right of eminent domain; authority to impose land-based charges; authority to levy assessments or, in lieu thereof, to fix and collect charges for water, including standby charges made to holders of title to land to which water may be made available, whether or not the

water is actually used; authority to establish rules and regulations for the sale and distribution of water, including rules for providing that water shall not be furnished to persons against whom there are delinquent water or other charges; authority to contract with the United States, the State of California (the “State”) and the agencies of either; the power to join with one or more public agencies, private corporations or other persons for the purpose of carrying out any of the powers of the District; the authority to acquire property or rights in property necessary or proper for the District works and to supply the land with sufficient water for all District purposes.

## **Governance and Management**

The District is governed by a 9-member Board of Directors (the “Board”) who are elected by the landowners in the District to staggered 4-year terms. The current directors, the date of initial election or appointment and the expiration dates of their terms are set forth below.

### **BOARD OF DIRECTORS**

<i>Name</i>	<i>Elected/Appointed</i>	<i>Term Expires</i>
Jean Sagouspe, President	August 2002	2009
Daniel Errotabere	December 1993	2009
Frank Coelho, Jr.	September 1991	2011
Don Devine	October 1993	2011
Larry J. Enos	September 2007	2011
Gary Esajian	May 2002	2009
Ted Sheely	December 1999	2011
Don Peracchi	June 2008	2009
John Deiner	October 2006	2011

Thomas W. Birmingham is the general manager/general counsel of the District. Mr. Birmingham is responsible for the daily operations and maintenance of the District, as well as representing it in the statewide water policy arena. Prior to his appointment as general manger/general counsel on October 1, 2000, Mr. Birmingham was a shareholder in the law firm of Kronick, Moskovitz, Tiedemann & Girard.

From 1995 until this appointment, Mr. Birmingham served as the District’s general counsel. Prior to that, for a period of nine years, Mr. Birmingham was special counsel to the District on a variety of matters including reclamation law, drainage and water supply. Mr. Birmingham is a recognized expert on issues of water and environmental law and has represented both public agencies and private parties in matters related to water rights, water quality, drainage issues, the Endangered Species Act, the California Environmental Quality Act, the Clean Water Act and other environmental laws. Mr. Birmingham received a Bachelor of Arts from University of California, Los Angeles and a Juris Doctor, with distinction, from University of Pacific, McGeorge School of Law.

## **Employees**

The Board of the District delegates day-to-day management of the District to the general manager/general counsel and other staff of the District. The District currently employs one hundred and eight staff members. The general manager/general counsel’s office consists of six staff members involved with executive administration and public information. The Finance & Administration Division, which consists of the Purchasing, General Accounting, Customer Accounting, and Human Resources & Administration departments, consists of twenty-seven employees. The Resources Division consists of nine employees involved in water and other resource activities. Another sixty-six employees work in the Operations & Maintenance Division, which consists of the Field Engineering, Operations, Mechanical

Maintenance, Maintenance Support, Electrical Maintenance, and Civil & Preventative Maintenance Departments.

The Operating Engineers Union Local Number 3 (“Local Number 3”) represents fifty-five non-management employees. The District and Local Number 3 have entered into a Memorandum of Understanding for the Miscellaneous Non Supervisory Unit (the “Miscellaneous Employees Memorandum”), dated February 24, 2009. The Westlands Office & Clerical Employee Association represents twenty-seven office and clerical employees. The District and the Westlands Office & Clerical Employee Association have entered into a Memorandum of Understanding for the Office & Clerical Employee Unit between the District and Westlands Office & Clerical Employee Association (the “Office and Clerical Employees Memorandum,” and together with the Miscellaneous Employees Memorandum, the “2009 Memorandums”), dated February 24, 2009. The 2009 Memorandums took effect as of March 1, 2009 and will extend through February 29, 2012.

### **Employee Benefits**

Full-time, regular and probationary employees are eligible for the District’s group insurance programs. The group insurance programs include medical, dental, vision, life, supplemental life, accidental death, employee assistance and long-term disability coverage. The District also offers its employees a deferred compensation plan created according to Internal Revenue Code Section 457 and a Flexible Spending Account Program under Internal Revenue Code Section 125. The District maintains mandatory workers’ compensation insurance coverage, the current carrier being Wausau Insurance Companies.

The District and the employees of the District contribute to the California Public Employee’s Retirement System (“PERS”), a multiple-employer public employee retirement system that acts as a common investment and administrative agent for participating public entities within the State. The District has continuing obligations under such plan. The District is required annually to contribute to PERS at an actuarially determined rate. For the District fiscal year (the “Fiscal Year”) ending February 29, 2008, the District was not required to make a contribution to PERS and the District had no unfunded liability.

PERS requires the District to participate in a risk pool with other public agencies. As a result, plan-specific information with respect to the District’s PERS plan is not available. For the District’s risk pool, as of June 30, 2007 (the latest date for which figures are available from Cal PERS), the excess of the unfunded liability over the actuarial value of the assets of the District was \$220,312,343 (a funded ratio of 91.6). Such excess may have been increased by a reduction in the value of Cal PERS investments since June 30, 2007.

In addition to providing pension benefits, the District currently provides certain health care benefits for retired employees. Substantially all of the District’s employees may become eligible for those benefits if they reach normal retirement age while working for the District. As of February 29, 2008, there were 57 retirees and 102 active plan participants. Expenses of approximately \$270,909 in Fiscal Year 2007-08 were recognized for post-retirement health care for the respective years ended.

Governmental Accounting Standards Board Statement No. 45 (“GASB 45”) requires governmental agencies that fund post-employment benefits on a pay-as-you-go basis, such as the District, to account for and report the outstanding obligations and commitments related to such post-employment benefits in essentially the same manner as for pensions. For the District, the reporting obligation begins with the Fiscal Year ending February 28, 2009. The District retained Nicolay Consulting (the “Actuarial Consultant”) to calculate the District’s post-employment benefits funding status. In a preliminary report

dated December 8, 2008 (the “Report”), the Actuarial Consultant concluded that, as of March 1, 2008, the District’s unfunded actuarial accrued liability for post employment benefits based upon a 7.75% discount rate was \$9,815,908. The Actuarial Consultant also concluded that the District’s annual required contribution (the actuarial value of benefits earned during Fiscal Year 2009 plus costs to amortize the unfunded actuarial accrued liability, or “ARC”) is \$1,280,785. While requiring the District to disclose the unfunded actuarial accrued liability and the ARC in its financial statements, GASB 45 does not require the District to amortize the ARC.

In Fiscal Year 2008-09, the District paid expenses with respect to post-employment benefits in an amount less than the ARC on a pay-as-you-go basis. For Fiscal Year 2009-10, the District has budgeted \$1,300,000 in order to fully fund the ARC. The District does not expect that any increased funding of post-employment benefits will have a material adverse affect on the ability of the District to make payments under the Westlands Water District Agreement.

### **District Insurance**

The District maintains general and professional liability, property, auto, mobile equipment, crime, and excess liability insurance provided by Arch Insurance Company. General liability coverage, which encompasses wrongful acts, bodily, personal and professional injury, including public officials’ errors and omissions and employment practices, is \$1,000,000 per occurrence, with a \$5,000 deductible. For real and business personal property, including property coverage extensions and boiler and machinery, coverage is approximately \$73,805,236, with a \$5,000 deductible. Coverage also includes a margin clause that will increase the District’s limits of property coverage by 25% in the event of loss or damage. Mobile equipment coverage is approximately \$1,050,757, with a \$5,000 deductible. The crime insurance covers dishonesty, thefts, disappearance, and destruction; and computer fraud coverage at limits of \$100,000 each with a \$500 deductible. The excess liability coverage is \$20,000,000. The District maintains workers’ compensation insurance as noted previously.

### **Land and Land Use**

The District encompasses an area of approximately 614,700 acres in Fresno and Kings Counties in the San Joaquin Valley of California. Substantially all of the land within the District is in agricultural production. Land within the District is relatively level. The District has hot, dry summers and cool, moist winters. Average rainfall is approximately eight inches a year.

When contract water from the Central Valley Project (“CVP”) was first delivered within the District in 1968, 27 different crops were grown on approximately 114,000 acres. Cotton, safflower, seed alfalfa, barley and cantaloupes were the major crops. By 1980, over 36 different commercial crops were being grown in the District. Today, farmers in the District produce over 60 different crops on approximately 560,000 acres, including cotton, tomatoes, pistachios, cantaloupes, lettuce, almonds and onions. In addition, the District operates and maintains two major facilities of the CVP, the Coalinga Canal and the Pleasant Valley Pumping Plant.

The San Luis Canal currently supplies approximately 99% of the District’s CVP and contract water through 38 gravity turnouts and 30 pumping plants located throughout the District. Pipeline laterals distribute water within the District. Some land located in the northern portion of the District can be serviced by either the Mendota Pool or the San Luis Canal. Whenever possible, the District delivers San Luis Canal water to these lands in order to decrease pumping costs. All deliveries to water users are measured by flow meters which are read by the District twice each month.

Set forth below are the ten crops with the highest value for calendar year 2008 and the approximate value thereof.

#### CALENDAR YEAR 2008 CROP VALUES

<i>Crop</i>	<i>Acres Planted</i>	<i>Value</i>
Almonds	70,252	\$287,555,486
Tomatoes – Processing	86,011	237,624,310
Pistachios	21,113	81,994,447
Cantaloupes	16,460	78,093,153
Lettuce – Fall	11,183	77,208,327
Cotton Lint Pima	31,293	48,862,768
Tomatoes – Fresh	3,495	44,889,431
Grapes – Wine	12,629	34,275,106
Garlic	10,285	34,196,802
Wheat	64,707	31,253,481

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Source: The District

Based on the most recently available data, the total gross value of the crops grown in the District during calendar year 2008 was approximately \$1,247,000,000.

#### District Water Supply

***CVP Contract Water.*** The District and the Department of the Interior, Bureau of Reclamation (the “Bureau”) executed a water supply contract in 1963 (the “1963 Contract”) (the District as it then existed being referred to herein as the “Original Westlands District” or “Area I”). Pursuant to the provisions of the 1963 Contract, the District is entitled to up to 900,000 acre-feet of firm water supply (the “1963 Contract Amount”) from the San Luis Unit of the CVP (the “San Luis Unit”), to the extent water and facilities are available, and subject to certain other terms and conditions. See the caption “—Cost of CVP Contract Water.” In 1965, the Original Westlands District merged with the Westplains Water Storage District (the area of the District which was included in the Westplains Water Storage District hereinafter referred to as the “Former Westplains District” or “Area II”) creating an enlarged District (the “1965 Merger”).

The merger of the Original Westlands District and the Former Westplains District occurred with the expectation that an additional water supply contract with the Bureau would be executed, which would incorporate the terms set forth in a memorandum executed by Kenneth Holum, Assistant Secretary of the Interior and approved by the Secretary of the Interior in 1964 (the “Holum Memorandum”). The Holum Memorandum generally contemplated the allocation of an additional 250,000 acre-feet of water from the San Luis Unit to the District at the rates set forth in the 1963 Contract.

Starting in 1968 and continuing through 1978, the Bureau supplied to the District, in addition to the 1963 Contract Amount, 200,000 acre-feet of water from the San Luis Unit as well as an additional 50,000 acre-feet of water from the Delta-Mendota Canal (collectively, the “Provisional Contract Amount”). Pursuant to internal water allocation policies developed by the District, the 1963 Contract Amount and the Provisional Contract Amount (collectively, the “CVP Contract Water”) were made available to water users in both the Original Westlands District and the Former Westplains District.

Negotiations of a proposed amendment to the 1963 Contract intended to implement the Holum Memorandum was generally completed by the Bureau and the District in 1975 (the “Proposed 1975

Amendment”). However, a lawsuit was brought by Contra Costa Water District to enjoin execution of the Proposed 1975 Amendment alleging a lack of an environmental impact statement (the “Contra Costa Action”). As a result of a preliminary injunction issued in the Contra Costa Action and for other reasons the Proposed 1975 Amendment was never executed.

Following the filing of the Contra Costa Action, the Bureau requested modifications to the Proposed 1975 Amendment, including an increase in rates to be charged for water delivered by the Bureau. From 1977 through 1981, the Bureau delivered water to the District pursuant to annual contracts, and no revised long-term contract was executed. Commencing July 1, 1978 the Bureau continued to deliver the Provisional Contract Amount pursuant to the Provisional Contract, but the cost of water was substantially increased. In addition, in 1979, certain landowners and water users in the Original Westlands District sued the District claiming that internal water allocation policy, which resulted in deliveries of 1963 Contract water to water users in the Former Westplains District, were improper.

In 1981, negotiations between the Bureau and the District concerning the renegotiation of the Proposed 1975 Amendments broke down, leading to a series of lawsuits ultimately involving the District, the Bureau and representatives of various groups of Original Westlands District and Former Westplains District landowners and water users. From 1982 through 1986 during the pendency of the lawsuits, the Bureau continued to deliver the 1963 Contract and the Provisional Contract Amounts pursuant to stipulated agreements in the litigation. In addition, the District distributed water within its boundaries according to internal water allocation policies which made the 1963 Contract Amount available to water users in the Original Westlands District and the Former Westplains District and the Provisional Contract Amount to water users in the Former Westplains District.

In 1986, all of the suits referred to above (except the Contra Costa Action) were the subject of a stipulated judgment (the “Barcellos Judgment”). Pursuant to the Barcellos Judgment, for the period prior to dismissal of the Contra Costa Action, the Bureau agreed to supply the Provisional Contract Amount to the District but at the Bureau cost-of-service rates rather than the 1963 Contract rates. The Bureau also agreed, subject to the requirements of federal law, to execute a long-term contract for 250,000 acre-feet of water and to use its best efforts to conclude a long-term contract for an additional 100,000 acre-feet of water for water users in the Former Westplains District (Area II) when additional CVP water became available.

The District agreed in the Barcellos Judgment that its internal water allocation policies would allow water users in the Original Westlands District first priority to the 1963 Contract Amount and would allow water users in the Former Westplains District first priority to the additional 250,000 acre-feet of water provided for in the Barcellos Judgment. The Barcellos Judgment also created a system of representation whereby landowners in the Original Westlands District and landowners in the Former Westplains District each appoint representatives (the “Area Representatives”) which the District is required to consult with and/or receive approval from prior to taking certain actions. In addition to the agreements set forth above, the Barcellos Judgment includes certain other provisions, including provisions relating to drainage. See the caption “—Drainage.” The Settlement Agreement was confirmed as described under the caption “—District Water Supply—Sagouspe Litigation” and such questions of water priority as between the Original Westlands District and the Former Westplains District will be resolved in accordance with the terms thereof. The Barcellos Judgment terminated by its terms on December 31, 2007.

Since 1989, the availability of CVP Contract Water has varied dramatically from year to year as a result of variances in precipitation, CVP storage and State and federal regulatory actions. See the caption “—Historic Water Usage.” On June 9, 2000, the Governor of the State of California and the Secretary of the Interior signed a document entitled “California’s Water Future: A Framework for Action.” This

document provides that, during the first four years of Stage 1 of the CALFED Program, south-of-Delta CVP agricultural water service contractors will in normal water years receive a 65-70% allocation of their existing Contract Water entitlement. For planning purposes, the District currently projects that CVP Contract Water deliveries will equal 55% of its 1,150,000 acre foot CVP Contract Water entitlement. The District revises such estimates from time to time based upon announced Bureau allocations. See, however, the caption “—Projected Water Usage” for a discussion of the projected CVP Contract Water deliveries in 2009, which the District expects will equal 0% of the District’s entitlement (exclusive of carryover water). Since 1987 and until December 31, 2007, the District allocated all water delivered by the Bureau in accordance with the Barcellos Judgment. Commencing on March 1, 2008, CVP Contract Water has been allocated in accordance with the Settlement Agreements described under the caption “—Sagouspe Litigation.”

The 1963 Contract and the Provisional Contract terminated by their terms on December 31, 2007. Under the Central Valley Project Improvement Act (“CVPIA”), adopted by the U.S. Congress in 1992, all CVP contractors, including the District, are subject to certain penalties if they failed to renew the contracts prior to October 1, 1997. To address this provision of the CVPIA, on September 30, 1997, the District and the United States entered into a Binding Agreement for Early Renewal Between the United States and Westlands Water District, for both the 1963 Contract and the Provisional Contract (the “Binding Agreement”). Although the Binding Agreement is not a renewal of the Water Contracts, the District expects that, upon completion by the Bureau of certain environmental reviews required by CVPIA, and subject to negotiations between the District and the United States, the 1963 Contract and the Provisional Contract (the “Water Contracts”) will be renewed in accordance with the Binding Agreement.

In early 2007, the Bureau determined that it would not complete the required environmental reviews for renewal of the long-term Water Contracts before December 31, 2007. As a result, the Bureau initiated negotiations with the District for the interim renewal of the Water Contracts, concluding with execution of the Interim Renewal contract (the “IRC”) on December 27, 2007. The IRC provides for the same quantity of water supply as the Water Contracts, for a term of twenty-six months (January 1, 2008 through February 28, 2010). The District now expects the long-term Water Contracts to be renewed during the term of the IRC, and in any event before February 10, 2010.

***Sagouspe Litigation.*** On June 18, 1999, owners of certain lands which were merged into the District as a result of the Westlands Water District Merger Law, California Water Code sections 37800 *et seq.*, commenced an action entitled *Sagouspe, et al. v. Westlands Water District, et al.*, (Fresno Superior Court Case No. 634127-5). In such action, the owners claimed, *inter alia*, that after December 31, 2007, the District would be obligated to allocate CVP Water delivered under a renewal of the 1963 Contract among all lands that were merged into the District and lands in the Original Westlands District equally, on a per acre basis. On March 29, 2000, owners of some of the lands in the Original Westlands District filed a cross-complaint in the *Sagouspe* action in which they claimed, *inter alia*, that Water Code section 37856 obligated the District to allocate CVP Contract Water delivered under a renewal of the 1963 Contract equally, on a per acre basis, to the lands that were in the District prior to the merger of the Original Westlands District and the Former Westplains District resulting from the Westlands Water District Merger Law. These lawsuits are collectively referred to as the “Sagouspe Litigation.”

On April 29, 2002, the parties to the Sagouspe Litigation entered into an Agreement for Distribution of Water, Allocation of Costs, and Settlement of Claims (the “Settlement Agreement”). Pursuant to the Settlement Agreement, the District agreed to purchase land and/or water entitlements within the District. The District agreed to purchase enough land and/or water entitlements in the District to allow, during a normal water year, an allocation of 2.6 acre-feet of water to each acre of the remaining non-retired irrigable land in the District, excluding land annexed after the 1965 Merger. Commencing on March 1, 2008, and thereafter, CVP Water and any other water supply acquired pursuant to the Settlement

Agreement shall be allocated equally to each acre of the remaining non-retired irrigable land in the District, excluding land annexed after the 1965 Merger.

***CVP Assignment Contract Water.*** Through a program to acquire long-term supplemental water entitlements, the District has acquired all or a portion of five other CVP contractors' water entitlements, to date totaling approximately 45,383 acre-feet. The District and the Bureau have executed assignment contracts for four of these acquisitions, totaling approximately 41,383 acre-feet, and such amount is included in the CVP Water totals under the caption "—Projected Water Usage." The District expects to execute an assignment contract for the remaining water entitlement acquisition, totaling 4,000 acre-feet in 2009.

***Supplemental Water.*** Since annual demand for water in the District exceeds CVP Contract Water supplies, water users in the District make up the shortfall through supplemental surface water purchases and groundwater supplies. Supplemental surface water is acquired from various other holders of water entitlements on the open market. While some District water users arrange their own supplemental surface water supply acquisition transactions, the District also takes subscription orders and acquires supplemental surface water on behalf of a combined group of water users. Since 1989, the quantity of supplemental surface water acquired in these combined fashions has ranged from a low of 16,000 acre-feet to a high of almost 356,000 acre-feet of water.

***Groundwater.*** Groundwater supplies are an important part of meeting the demand for water within the District. In many cases, groundwater is less costly than surface water supplies. However, the long-term use of groundwater has negative implications for both water quality and on overdraft of the groundwater basin. In addition, subsidence of land adjacent to the San Luis Canal is another concern sparked by high levels of groundwater pumping. The District has determined that the safe yield for groundwater pumping is approximately 200,000 acre-feet per annum.

The District generally does not pump groundwater for resale. The District estimates, however, that groundwater pumping by landowners and water users within the District since 1993 has ranged from 14,000 acre-feet to 485,000 acre-feet per year. Groundwater pumping varies dramatically from year-to-year, but generally increases in years when CVP Contract Water decreases. See the caption "—Historic Water Usage."

### **Cost of CVP Contract Water**

The cost of Contract Water is determined by the Bureau. Prior to January 1, 2008, the cost of Contract Water was determined pursuant to the terms of the Water Contracts, as amended, and applicable laws. From and after January 1, 2008 the cost of Contract Water has been determined in accordance with the IRC and applicable laws. Under the Water Contracts, there were four Bureau water rates, plus one Bureau water charge, applied to each acre foot of water delivered, described below. Under the IRC, only the Cost of Service and Full Cost water rates and the Restoration Fund charge remain.

1. 1963 Contract rate: The Contract rate was a fixed price provided in the 1963 Contract, and was lower than the Bureau's actual cost of providing the water service. Water users who elected to be subject to the Reclamation Reform Act of 1982 ("RRA") paid the 1963 Contract rate.

2. Operation & Maintenance rate or O&M rate: The O&M rate represented the Bureau's actual cost to operate and maintain the various CVP facilities. All water users within the District that elected to conform to the discretionary provisions of the RRA were required to pay the O&M rate, unless otherwise required to pay the higher Cost of Service or Full Cost rates described below. One component of the O&M rate was not set by the Bureau, but was set by the San Luis & Delta-Mendota Water



Authority (the “Authority”), which directly funds the cost of operating and maintaining the San Luis and Delta-Mendota Canals, and related facilities.

3. **Cost of Service rate:** The Cost of Service rate represents the O&M rate plus the repayment of capital costs related to the CVP and amortization of certain CVP related operation and maintenance deficits through the year 2030. The capital component in the Cost of Service rate is non-interest bearing. Prior to January 1, 2008, water users who received Provisional Contract Water and CVP Assignment Contract Water, unless subject to the higher Full Cost rate, paid the Cost of Service rate.

4. **Full Cost rate:** Under the RRA, water users that lease more than 960 acres of land receiving water under the Reclamation Law must pay the Full Cost rate, which includes an interest component on outstanding capital.

5. **Municipal & Industrial rate:** The District provides approximately 6,000 acre-feet per year for incidental non-agricultural water service, for which a separate Municipal and Industrial rate applies.

6. **Restoration Fund charge:** Section 3407(c) of CVPIA imposes on the District a fee on each acre foot of CVP Contract Water delivered by the District, in order to fund payments in the Restoration Fund, established to carry out the fish and wildlife restoration goals of CVPIA.

The table below sets forth the Bureau 1963 Contract Rate, the O&M Rate, Cost-of-Service Rate, the Full Cost Rate, and the Restoration Charge per acre-foot for Fiscal Years 2000 through 2009.

<i><b>Fiscal Year</b></i>	<i><b>1963 Contract Rate</b></i>	<i><b>O&amp;M Rate</b></i>	<i><b>Cost-of Service Rate</b></i>	<i><b>Full Cost Rate</b></i>	<i><b>Restoration Charge</b></i>
2009	\$N/A	\$N/A	\$87.03	\$106.89	\$9.06
2008	N/A	N/A	64.10	84.45	8.79
2007	8.00	38.52	56.75	77.56	8.58
2006	8.00	33.50	51.02	73.19	8.24
2005	8.00	30.89	46.67	70.24	7.93
2004	8.00	32.41	48.10	72.15	7.82
2003	8.00	27.90	43.30	67.19	7.69
2002	8.00	27.67	42.27	66.45	7.54
2001	8.00	30.77	44.56	71.13	7.28
2000	8.00	25.72	39.65	66.81	7.10

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Source: District.

The Cost-of-Service Rate and the Full Cost Rate can vary significantly from year-to-year as a result of changes in Bureau costs, reductions in total CVP deliveries and other factors. In addition, the U.S. Congress has increased Bureau CVP water rates by legislation in the past and may do so again in the future. For this reason Bureau rates are difficult to forecast from year-to-year.

In addition to the rates set forth above, an amount (the “Potential Deficit”) equal to the difference between the actual cost of operations and maintenance as computed in accordance with Reclamation Law (“Actual O&M”) and the payments made in accordance with the Water Contracts, the IRC, and Reclamation Law, whichever is applicable, is accrued by the Bureau. The District has the option to voluntarily pay all or a portion of the Potential Deficit. The amount of Potential Deficit not paid by the District voluntarily (the “Actual Deficit”) is required under current Reclamation Law to be repaid within

thirty days after notice by the Bureau and accrues interest thereafter. On December 27, 1992 the District prepaid substantially all of its Actual Deficit accrued through that date. As of September 30, 2007 (the latest date for which information is available from the Bureau), the District has an Actual Deficit balance of zero.

Under certain circumstances the Water Contracts permitted the deferral of payments of certain costs by the District. The District has exercised these rights to defer payments, most recently in Fiscal Year 1993 when approximately \$3,982,800 of costs were deferred. All deferred amounts were paid by the Fiscal Year 1994.

As of March 1, 1998, responsibility for operation and maintenance (“O&M”) of CVP conveyance systems was transferred to joint powers agencies representing most of the water contractors served by such facilities. At the same time, funding responsibilities were transferred, so that water contractors such as the District directly pay the costs of conveyance O&M. Federal appropriations no longer fund the activity, except where the federal government is the water contractor. Pursuant to these agreements, the Authority now sets and collects O&M rates for CVP conveyance facilities utilized to deliver water to the District. Overall, the transfer of responsibilities provides greater local control over cost and increases facilities reliability. The conveyance O&M costs must be fully funded on an annual basis, which may cause some year-to-year increases. However, such costs will also be fully accounted for, with overpayments available for credit or refunding. The District will no longer incur interest-bearing deficit obligations to the federal government for the conveyance O&M costs.

### **District Water Charges**

**Rate Setting Procedure.** Water rates are typically adopted in February, after Board approval of the District’s proposed budget and are subject to the notice, hearing and protest provisions of Proposition 218. See the caption “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON APPROPRIATIONS AND FEES\* Proposition 218.” The budget takes into account the water supply situation facing the District for the upcoming water year. The District operates on a March-to-February Fiscal Year. The budget adopted in February may be augmented during the year if the water supply situation improves.

The District raises annual operating revenues from water sales, billed monthly. The District’s water sales revenue covers all operating expenses as well as a portion of its capital repayment obligation to the Bureau. Non-operating revenues include interest income and assessments.

Payment for water and power used is due by the 25th day of the month following the month of use. No further water deliveries are made if payment is not received when due. In the event payment is not made for water allocated or used, the amount owed may be added to the annual assessment on the land on which the water was allocated or used.

Each January, farmers within the District must apply for an allocation of agricultural water for the forthcoming crop year (March 1 to February 28) and agree to accept and pay for it. The Bureau informs the District by February of the initial availability of CVP Water.

**Water Charges.** The District’s O&M rate covers all costs associated with supplying and distributing water to its customers, in addition to acquisition of capital assets and preventive maintenance programs, depreciation and a portion of the District’s capital repayment obligation. Rates may be subsequently adjusted if the water supply situation changes after February. The District’s O&M rate is added to the cost of CVP Water deliveries.

In March 1998, the District also adopted the Actual USBR O&M, O&M Deficit, and the Capital Shift rate components. These rates were established to address any interest-bearing deficit obligation accruing to the federal government, resulting from the difference between the United States' actual O&M costs and the rates collected under the District's Water Contracts, and an internal shifting of costs between District ratepayers related to the United States deficit accounting policies. Prior Law, 1963 Contract rate payers (water users who did not elect to conform to the discretionary provisions of the Reclamation Law) were excluded by the Barcellos Judgment from having to pay these charges. Therefore, the District will continue to accrue certain O&M Deficits, and cost shifts, until Water Contract is renewed. With execution of the IRC, certain pre-existing cost shift issues were resolved. Any deficit and/or cost shift issues that arise in the future will be addressed by the District.

The Water Delivered Benefit rate is collected by the District from all water users who take delivery of any water through the District's distribution system to repay a portion (30%) of the District's capital obligation to the United States for construction of the distribution and drainage system.

The State Water Resources Control Board ("SWRCB") water rights fee rate is collected by the District from all water users who take delivery of any of the District's Contract Water in order to pay the SWRCB's fees for water rights and water quality certification programs adopted as a result of the emergency regulations implementing SB 1049.

The District imposes a number of other rates and charges. The Water Allocation Benefit charge is billed by the District to all water users based upon the amount of Contract Water that is allocated to land such users farm, and is used to repay a portion (20%) of the District's capital obligation to the United States for construction of the distribution and drainage system. Usage charges are billed by the District to water users based upon their overuse of water allocated to their account and for use of the distribution system on lands which are not assessable but which the water user farms to cover a share of the repayment obligation to the Bureau for costs incurred in building distribution and drainage collector facilities in the District. A Power Surcharge, based on pumping pressure and lift, is added to water rates for agricultural deliveries through temporary facilities. This surcharge applies to lands west of the San Luis Canal and the Coalinga Canals. The Ground Water Management Program charges are collected on all water delivered through ground water pumping facilities that have been transferred to the District by water users. Account Monitoring Charges are imposed on certain water users with delinquent accounts or where increased monitoring is warranted in order to recover the District's cost of providing associated services.

***Acreage Charges.*** In 1999, the District adopted a charge on all irrigable acreage in Areas I and II to provide the area representatives with funding to monitor District activities related to the Barcellos Judgment. In 2000, the Long-Term Water Supply debt service charge was adopted to cover the Series 1999A Installment Payments and fund an internal reserve for the first phase of the District's land and water acquisition program. The calculation of the Long-Term Water Supply debt service charge was revised in 2003 pursuant to the terms of the Settlement Agreement. The District raised the Long-Term Water Supply debt service charge beginning in Fiscal Year 2005-06 to pay a portion of the Series 2005A Installment Payments. In Fiscal Years 2007-08 and 2008-09, the charge was increased to pay the Series 2007A Installment Payments, the Series 2007B Installment Payments, and Series 2008A Installment Payments (as such terms are defined under the caption "—Outstanding Indebtedness"), respectively. In 2006, the District adopted a charge on all irrigable acreage in Areas I and II to provide the landholder committee with funding for expenses related to the Settlement Agreement.

Annually, the District assesses all lands to collect 50% of the repayment obligation to the Bureau for costs incurred in building distribution and drainage collector facilities in the District. At its inception, the 1965 Contract obligation totaled \$157,048,000, less \$8,360,000 paid from Lemoore Naval Air Station

lease revenues. In addition, the obligation under Public Law 95-46 (San Luis Unit Task Force legislation) and the Barcellos Judgment for repayment of additional distribution and drainage collector facilities originally totaled \$17,471,231. These obligations are non-interest bearing. Collection for the 1965 Contract obligation began in 1979 and continues through the year 2018. Collection for the Public Law 95-46 obligation began in 1981 and concluded in Fiscal Year 2001. The annual principal payment on the 1965 Contract is \$3,982,800.

The District anticipates significantly lower CVP Contract Water deliveries in calendar year 2009 and accordingly projects lower water sales revenues for such year. See the caption “—Projected Water Usage” and the table entitled “Projected Operating Results and Debt Service Coverage” under the caption “—Projected Operating Results.” As a result, the District currently expects to impose an additional land-based charge (the “2010 Charge”) in the approximate amount of \$10.1 million for Fiscal Year 2010 only. A portion of the 2010 Charge will be imposed upon property owners to produce monies to pay amounts due to the Authority under a San Luis & Delta Mendota Water Authority Delta Habitat Conservation and Conveyance Program Activity Agreement (the “Westlands Water District DHCCP Activity Agreement”), dated as of March 1, 2009, by and between the District and the Authority. Before imposing the 2010 Charge, the District will be required to comply with the notice, hearing and protest procedures of Proposition 218 in connection with the imposition of the 2010 Charge. See the caption “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON APPROPRIATIONS AND FEES—Proposition 218” for a discussion of the election requirements under the California Constitution with respect to such charges. There can be no assurance that the 2010 Charge will become effective and in the event that the 2010 Charge does not become effective, the District will be required to pay amounts due under the Westlands Water District DHCCP Activity Agreement from District Revenues or reserves.

***Settlement Agreement Charges.*** Under the Settlement Agreement, the District is obligated to assess all irrigable land within Area I and Area II of the District to pay the sum of 78.73% of the Series 1999A Installment Payments and all of the Series 2002A Installment Payments annually on a per acre basis to non retired lands in Area I and Area II, respectively, on the basis of a 1 to 2.33 ratio.

In addition, a charge for extraordinary repairs of pipe is collected each year on all irrigable land within Area I and Area II of the District to cover the costs of certain repairs and replacements to the distribution system.

Settlement Agreement charges are approved by the District on an annual basis and are subject to the hearing and protest provisions of Proposition 218. See the caption “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON APPROPRIATIONS AND FEES—Proposition 218.”

***Supplemental Water.*** The cost of supplemental surface water acquired, either directly by water users or by the District on behalf of a group of water users, is borne by the individual or the group, respectively. For supplemental surface water acquired by the District, all water transaction costs are pooled together and a single, blended rate per acre foot of water is then charged to the individuals comprising the group, based upon their individual allocations of such supplemental surface water.

***Municipal and Industrial Water.*** The District delivers nonagricultural water to Lemoore Naval Air Station, area businesses, labor facilities, cotton gins, crop-grading stations, processing plants and private homes. The intended use of nonagricultural water requires a minimum billing of either 1 or 2 acre-feet, payable in advance. This water use accounts for about 6,000 acre-feet, under 1.0 percent of water used.

## **Drainage**

In 1960, when the San Luis Unit of the CVP was authorized, provisions for drainage of sub-surface saline agricultural water were included in the legislation. The District maintains that its 1963 Contract requires the Bureau to provide drainage service to lands within the District that are affected by sub-surface drainage. The Bureau originally intended to build the San Luis Drain from the extreme southern end of the District to a discharge point into the Sacramento San Joaquin River Delta/San Francisco Bay Estuary (the “Bay Delta”). Environmental considerations prevented completion of the Drain, of which some 82 miles had been constructed between 1968 and 1975. The Drain was terminated at the Kesterson Wildlife Refuge, which is about 40 miles north of the District. Between 1978 and 1986, approximately 7,300 acre-feet of drainage water from the District drained annually into the San Luis Drain and Kesterson Reservoir. This saline drainage water was collected from a 42,000 acre area of the District having District open joint collector lines with approximately 5,000 of these acres having on-farm collector lines.

In March 1985, due to concerns over selenium concentrations in waterfowl at the Kesterson Refuge, the Department of Interior announced plans to immediately close Kesterson and the Drain and terminate irrigation water deliveries to 42,000 acres in the District. This plan was later modified to permit continued irrigation but required the District to find alternative means for disposing of the drainage water or stop all flows to Kesterson Reservoir by June 1986. The District initially attempted to provide evaporation ponds to dispose of the drainage water. However, because of requirements by regulatory agencies as to the design and monitoring of the ponds, the costs proved prohibitive. As a last resort, to meet the June 1986 deadline, as required by its agreement with the United States, the District plugged the drains in May 1986. For a description of the District’s responsibility for a share of the costs of cleanup of Kesterson Reservoir, see the caption “—Kesterson Cleanup Cost.”

In 1994, the Federal District Court ordered the Bureau to make application to the SWRCB for the water quality permits necessary to complete the Drain. The State Board then concluded that a comprehensive environmental review regarding drainage alternatives was necessary and initiated a negotiation process with the District and the Bureau for payment of environmental service costs. In February 2000, the United States Court of Appeals for the Ninth Circuit affirmed the District Court’s decision that the Secretary of the Interior has a statutory duty to provide drainage service to the San Luis Unit of the CVP. It reversed, however, the District Court’s injunction ordering the Bureau to make the application necessary to complete the Drain. The Ninth Circuit held that the Secretary has discretion to provide drainage service through means other than the Drain, and the form of the injunction impermissibly constrained the exercise of that discretion. On April 18, 2001, the Bureau submitted a plan describing additional studies it would conduct to assess all viable drainage service alternatives to determine their economic feasibility, environmental impacts and benefits. A final plan and supporting Environmental Impact Statement (EIS) was completed and released during March 2007. The Bureau has indicated that it may not receive sufficient appropriations from the Federal Government to implement the Preferred Alternative that was identified in the EIS Record of Decision. As a result, the Bureau has requested and initiated negotiations with affected San Luis Unit Contractors, including the District, for an alternative drainage solution. These negotiations are in process, but the District cannot predict the outcome of such negotiations.

To implement drainage strategies in the San Joaquin Valley, the San Joaquin Valley Drainage Authority (“SJVDA”), a joint powers authority, was formed on January 1, 1999. The SJVDA, consisting of seven member agencies, including the District, is organized to cost share various drainage activities and develop regional drainage solutions including, but not limited to, out of valley disposal of sub-surface drainage.

In addition, the District and the Bureau are pursuing several other strategies to cope with the lack of drainage facilities including reduction of drainage water through prudent management and

conservation of irrigation water. Strategies under consideration include treating and recycling drainage water, agriforestry, evaporation ponds, cogeneration, selected land retirement, and shallow groundwater pumping.

The lack of adequate drainage management will, over time, cause the buildup of saline sub-surface water in certain areas within the District. The extent of this buildup is uncertain, as is the ultimate cost of drainage management and treatment. District management believes that a solution can be developed that is manageable, both technically and economically, within the financial capabilities of the District.

### **Kesterson Cleanup Cost**

In 1995, the Bureau issued a Kesterson Reservoir Cleanup Repayment Report (the “Repayment Report”) in response to the Federal Conference Report accompanying H.R. 5019, which required that repayment policies with respect to Kesterson and other drainage related costs be reviewed. The Repayment Report included estimated reimbursable and non-reimbursable cleanup costs. The District’s reimbursable costs incurred from 1985 through 1990 were approximately \$19.8 million. The Bureau has capitalized these costs over the period 1999 to 2030, and will include such costs in the capital portion of the District’s CVP Contract Water rates in those years. The District’s reimbursable costs incurred after 1990 have been and will be included in the Bureau’s annual O&M rates charged to the District. These costs range from \$200,000 to \$1,000,000 annually, depending upon the level of monitoring activity.

### **Historic Water Usage**

The District records the volume of water delivered by its distribution system and estimates groundwater pumping by water users in the District. The following table summarizes water deliveries and groundwater pumping in the District for the most recent ten water years.

#### **HISTORIC WATER USAGE (Acre-Feet)**

<b><i>Water Year</i></b>	<b><i>CVP Contract Water <sup>(1)</sup></i></b>	<b><i>Supplemental Water <sup>(2)</sup></i></b>	<b><i>Ground Water <sup>(3)</sup></i></b>	<b><i>Total Water Usage</i></b>
2007-08	629,520	149,020	315,000	1,093,540
2006-07	1,076,461	84,015	25,000	1,185,476
2005-06	986,159	129,111	75,000	1,190,270
2004-05	793,383	148,600	210,000	1,151,983
2003-04	855,306	148,320	160,000	1,163,626
2002-03	776,526	170,083	205,000	1,151,609
2001-02	608,200	213,698	215,000	1,036,898
2000-01	691,624	336,096	225,000	1,252,720
1999-00	802,398	293,418	60,634	1,156,450
1998-99	945,115	216,889	15,000	1,177,004

<sup>(1)</sup> Includes rescheduled water from the previous water year. Includes long-term supplemental water.

<sup>(2)</sup> Includes annual supplemental surface water acquired by the District and acquired by water users independent of the District.

<sup>(3)</sup> Estimated groundwater pumped by landowners or water users in the District.

Source: District.

Contract Water deliveries have varied dramatically from year-to-year as a result of variances in precipitation, CVP storage and State and federal regulatory actions. Supplemental water purchases and

groundwater pumping by water users in years of low CVP Contract Water deliveries substantially offset the decreases in CVP Contract Water deliveries.

### **Projected Water Usage**

The following table lists the District's estimated water deliveries for the Fiscal Year just ended and the next four Fiscal Years as well as estimated groundwater pumping by water users in the District. In water year 2008-09, the District received a 40% allocation of its CVP Contract Water entitlements.

For water year 2009-10, projected CVP Contract Water deliveries have been adjusted to reflect a 0% allocation, primarily resulting from three successive years of very low precipitation throughout California. Notwithstanding a 0% allocation, the District anticipates that 210,000 acre feet of CVP Contract Water, which represents carryover water from water year 2008-09, will be available to the District in water year 2009-10, as set forth in the table below entitled "Projected Water Usage." For the remaining water years, projected CVP Contract Water deliveries are based on a revised, ten-year average, or about 55% of the District's CVP Contract Water entitlements. For more information, see the caption "STATE AND FEDERAL REGULATORY ACTIVITIES—Bay-Delta Matters—ESA Litigation."

The District received supplemental water commencing in Fiscal Year 2002 and projects other supplemental water purchases as well. Groundwater pumping in 2008-09 and 2009-10 is projected to increase significantly with the lower CVP Contract Water deliveries, but thereafter remain steady at much lower levels over the long term. CVP Contract Water entitlements will vary from year-to-year as described herein and such variations may be material. Reduced CVP Contract Water deliveries may result in an increase in Supplemental Water purchases and increased groundwater pumping.

### **PROJECTED WATER USAGE (Acre-Feet)**

<b><i>Water Year</i></b>	<b><i>CVP Contract Water<sup>(1)</sup></i></b>	<b><i>Supplemental Water<sup>(2)</sup></i></b>	<b><i>Ground Water<sup>(3)</sup></i></b>	<b><i>Total Water Usage</i></b>
2008-09	385,360	186,000	500,000	1,071,360
2009-10	210,000 <sup>(4)</sup>	47,000	600,000	857,000
2010-11	658,000	112,000	170,000	940,000
2011-12	658,000	112,000	170,000	940,000
2012-13	658,000	112,000	170,000	940,000

<sup>(1)</sup> May include rescheduled water from the previous water year.

<sup>(2)</sup> Includes supplemental surface water acquired by the District and acquired by water users independent of the District.

<sup>(3)</sup> Estimated groundwater pumped by landowners and water users in the District.

<sup>(4)</sup> Entire amount carried over from Bureau allocation from prior water year.

Source: District.

The District is continuing to develop additional supplemental water sources for water year 2009-10. If such efforts are successful, the District expects a reduction in groundwater pumping, but no net increase in total water usage. In such event, District operating revenues and expenses in water year 2009-10 may be materially higher than currently projected. See the caption "—Projected Operating Results."

### **Historic Revenues and Expenses**

The following table sets forth a summary of water system operating results and debt service coverage of the District for the last five Fiscal Years. The information set forth in the following table has

been derived by the District from its audited financial statements for such Fiscal Years, but excludes certain non-cash items and certain other adjustments. A copy of the 2007-08 audited financial statements of the District, including the unqualified opinion letter of Sampson & Sampson, CPAs, Clovis, California (the "Auditor") are included as Exhibit D-1 hereto. The District has not requested the consent of the Auditor to reproduce such financial statements in this Official Statement and the Auditor has not updated such financial statements since the date thereof. The following summary for the Fiscal Year ended the last day of February for the years indicated is qualified in its entirety by reference to such statements for such years, including the notes thereto. The Auditor has not reviewed the information set forth in the following table.

### HISTORIC OPERATING RESULTS AND DEBT SERVICE COVERAGE (Fiscal Years)

	2004	2005	2006	2007	2008
<b>Revenues:</b>					
Irrigation Water Sales <sup>(1)</sup>	\$56,832,586	\$ 66,258,040	\$ 81,035,818	\$79,189,389	\$78,343,795
Municipal & Industrial Water Sales	1,099,225	2,430,247	2,118,276	1,948,745	2,237,998
Interest Income	1,834,021	1,544,654	2,681,865	2,570,147	3,517,648
Assessments and Other Charges	12,278,115	10,748,025	13,147,076	12,351,385	15,098,689
Other Revenue	4,957,528	706,559	1,146,891	1,794,689	2,988,623
<b>Total Revenues</b>	<u>\$77,001,475</u>	<u>\$ 81,687,525</u>	<u>\$100,129,926</u>	<u>\$ 97,854,355</u>	<u>\$102,186,753</u>
<b>Expenses:</b>					
Purchased Water	\$49,118,779	\$ 55,001,035	\$ 69,217,824	\$66,806,742	\$60,723,897
Pumping	287,816	303,031	304,437	414,085	217,412
Transmission and Distribution <sup>(2)</sup>	4,498,879	3,964,130	4,018,893	3,858,141	4,172,752
Administrative	6,911,514	7,568,473	8,610,292	8,601,682	11,315,258
Drainage	0	0	0	0	0
SLDMWA Project Contract <sup>(3)</sup>	400,636	411,468	400,873	402,063	425,216
<b>Total Expenses</b>	<u>\$61,217,624</u>	<u>\$ 67,248,137</u>	<u>\$ 82,552,319</u>	<u>\$ 80,082,713</u>	<u>\$76,854,535</u>
<b>Net Revenues</b>	<u>\$15,783,851</u>	<u>\$ 14,439,388</u>	<u>\$ 17,577,607</u>	<u>\$ 17,771,642</u>	<u>\$25,332,218</u>
<b>Contract Payments</b>					
Series 1999A Installment Payments	\$ 2,193,714	\$ 2,198,205	\$ 1,490,553	\$ 846,182	\$835,923
Series 2002A Installment Payments	4,832,538	5,664,340	6,482,800	6,481,538	6,463,420
Series 2005A Installment Payments	--	--	3,768,319	3,685,562	3,699,055
Series 2005B Installment Payments	--	--	423,776	1,169,051	1,344,445
Series 2007A Installment Payments	--	--	--	--	1,692,669
Series 2007B Installment Payments	--	--	--	--	233,971
State Irrigation Loan #1	64,646	64,607	64,575	64,539	64,465
State Irrigation Loan #2	323,178	322,605	322,875	322,864	323,055
<b>Total Contract Payments</b>	<u>\$ 7,414,076</u>	<u>\$ 8,249,757</u>	<u>\$ 12,552,885</u>	<u>\$ 12,569,736</u>	<u>\$14,657,003</u>
<b>Coverage Ratio<sup>(4)</sup></b>	2.13	1.75	1.40	1.41	1.73
<b>Subordinate Contract Payments</b>					
1965 Contract	\$ 3,982,714	\$ 3,982,714	\$ 3,382,714	\$3,982,714	\$3,982,714
Prop 44 Loan	75,833	75,706	75,713	75,673	75,642
<b>Total Subordinate Contract Payments</b>	<u>\$ 4,058,547</u>	<u>\$ 4,058,420</u>	<u>\$ 4,058,427</u>	<u>\$ 4,058,387</u>	<u>\$4,058,356</u>
<b>Remaining Balance</b>	<u>\$ 4,311,228</u>	<u>\$ 2,131,211</u>	<u>\$ 966,295</u>	<u>\$ 1,143,519</u>	<u>\$6,616,859</u>

<sup>(1)</sup> Includes CVP Contract Water and supplemental surface.

<sup>(2)</sup> Reflects additional pumping and delivery costs associated with the purchase of a significant amount of supplemental water.

<sup>(3)</sup> District payment obligation under Project Agreement with the Authority with respect to Tracy Pumping Plant Project.

<sup>(4)</sup> Equals Net Revenues divided by Total Contract Payments.

Source: District.



### **Projected Operating Results**

Estimated projected operating results (on a cash basis) for the District for the current and next four Fiscal Years are set forth below. The projected operating results for Fiscal Year 2010 reflect the projected 0% allocation for CVP Contract Water resulting from three successive years of very dry hydrology in California. For more information, see the caption “—Projected Water Usage.” Certain assumptions have been made by the District in the development of the projections. Many of these assumptions are reflected in the footnotes accompanying the projections. While the District believes its assumptions are reasonable, there can be no assurance that the assumed conditions will in fact occur. The District’s projections may be affected (favorably or unfavorably) by unforeseen future events. Therefore, the results projected below cannot be assured.

**PROJECTED OPERATING RESULTS AND DEBT SERVICE COVERAGE**  
**(Fiscal Years)**

	2009 <sup>(1)</sup>	2010 <sup>(2)</sup>	2011	2012	2013
<b>Revenues:</b>					
Irrigation Water Sales <sup>(3)</sup>	\$ 106,369,900	\$ 55,155,200	\$ 131,566,100	\$ 135,505,600	\$ 139,563,300
Municipal & Industrial Water Sales <sup>(4)</sup>	2,945,400	4,501,900	4,654,900	4,794,500	4,938,300
Interest Income <sup>(5)</sup>	1,811,200	832,900	849,600	866,600	883,900
Assessments and Other Charges <sup>(6)</sup>	14,228,000	23,396,300	14,287,000	14,294,500	14,279,400
Other Revenue <sup>(7)</sup>	<u>5,685,300</u>	<u>6,297,700</u>	<u>5,977,300</u>	<u>6,037,100</u>	<u>6,097,500</u>
<b>Total Revenues</b>	<u>\$ 131,039,800</u>	<u>\$ 90,184,000</u>	<u>\$ 157,334,900</u>	<u>\$ 161,498,300</u>	<u>\$ 165,762,400</u>
<b>Expenses:</b>					
Purchased Water <sup>(8)</sup>	\$ 87,010,000	\$ 44,855,200	\$ 102,721,200	\$ 105,802,800	\$ 108,976,900
Pumping <sup>(8)</sup>	275,800	275,000	315,400	324,900	334,600
Transmission and Distribution <sup>(8)</sup>	5,208,500	6,794,800	6,995,500	7,205,400	7,421,600
Administrative <sup>(8)</sup>	16,181,900	17,194,300	19,325,000	19,518,300	19,713,500
Westlands Water District DHCCP Activity Agreement	--	--	<u>2,250,000</u>	<u>2,250,000</u>	<u>2,250,000</u>
<b>Total Expenses</b>	<u>\$ 108,676,200</u>	<u>\$ 69,119,300</u>	<u>\$ 131,607,100</u>	<u>\$ 135,101,400</u>	<u>\$ 138,696,600</u>
<b>Net Revenues</b>	\$ 22,363,600	\$ 21,064,700	\$ 25,727,800	\$ 26,396,900	\$ 27,065,800
<b>Contract Payments<sup>(9)</sup></b>					
Series 2008A Installment Payments	\$ 1,939,930	\$ 1,942,798	\$ 1,944,612	\$ 1,945,369	\$ 1,945,070
Series 2007B Installment Payments	1,311,156	1,311,856	1,311,956	1,311,456	1,311,381
Series 2007A Installment Payments	2,285,750	2,284,850	2,284,663	2,288,375	2,285,663
Series 2005B Installment Payment	268,200	--	--	--	--
Series 2005A Installment Payments	3,670,713	3,664,238	3,668,888	3,664,775	3,662,881
Series 2002A Installment Payments	6,444,738	6,451,913	6,441,588	6,449,313	6,439,138
State Irrigation Loan #1	64,600	65,844	65,844	65,844	65,844
State Irrigation Loan #2	<u>322,900</u>	<u>323,293</u>	<u>323,293</u>	<u>323,293</u>	<u>323,293</u>
<b>Total Contract Payments</b>	<u>\$ 16,307,987</u>	<u>\$ 16,044,792</u>	<u>\$ 16,040,844</u>	<u>\$ 16,048,425</u>	<u>\$ 16,033,270</u>
<b>Net Revenues Remaining After Total Contract Payments</b>	\$ 6,055,613	\$ 5,019,908	\$ 9,686,956	\$ 10,348,475	\$ 11,032,530
<b>Coverage Ratio<sup>(10)</sup></b>	1.37	1.31	1.60	1.64	1.69
<b>Subordinate Contract Payments</b>					
1965 Contract	\$ 3,982,714	\$ 3,982,714	\$ 3,982,714	\$ 3,982,714	\$ 3,982,714
Prop 44 Loan	<u>75,700</u>	<u>76,824</u>	<u>76,824</u>	<u>--</u>	<u>--</u>
<b>Total Subordinate Contract Payments</b>	<u>\$ 4,058,414</u>	<u>\$ 4,059,538</u>	<u>\$ 4,059,538</u>	<u>\$ 3,982,714</u>	<u>\$ 3,982,714</u>
<b>Remaining Balance</b>	<u>\$ 1,997,919</u>	<u>\$ 960,370</u>	<u>\$ 5,627,418</u>	<u>\$ 6,365,761</u>	<u>\$ 7,049,816</u>

<sup>(1)</sup> Based on District's adopted budget for Fiscal Year 2008-09.

<sup>(2)</sup> Based on District's adopted budget for Fiscal Year 2009-10.

<sup>(3)</sup> Based on water sales as set forth in the table titled "Projected Water Usage," including rate increases effective for Fiscal Year 2008-09 and a projected decrease in CVP Contract Water deliveries in calendar year 2009 as described under the caption "—Projected Water Usage," and includes a projected 3% increase in water rates per annum. See the caption "THE DISTRICT—District Water Charges."

<sup>(4)</sup> Assumes an increase of approximately 3% in water rate per annum.

<sup>(5)</sup> Investment earnings on certain District reserve at an assumed rate of 2% per annum.

<sup>(6)</sup> Fiscal Year 2010 reflects a one-year land-based charge of approximately \$9 million described under the caption "District Water Charges—Acreage Charges."

<sup>(7)</sup> Includes late charges, meter rentals, other equipment rentals, installation fees, miscellaneous income (e.g. sale of assets such as trucks) and prior year items.

<sup>(8)</sup> Reflects projected water sales as set forth in the table titled "Projected Water Usage," including projected decrease in CVP Contract Water deliveries in calendar year 2008 and 2009 as described under the caption "—Projected Water Usage"; includes a projected 3% per annum increase in water rates.

<sup>(9)</sup> All Contract Payments reflect gross amounts payable by District. The Series 2008A Installment Payments allocable to \$29,785,000 of the Series 2008A Certificates projected at the Amended 2005 Swap Agreement fixed rate of 3.017% per annum and the remaining \$280,000 of Series 2008A Installment Payments projected at 3.017% per annum.

<sup>(10)</sup> Equals Net Revenues divided by Total Contract Payments.

Source District.

## **Investment of District Funds**

All funds held by the District are invested in accordance with the District's Investment Policy. The primary objectives, in priority, are safety of principal, liquidity, and yield. The comprehensive Investment Policy was adopted by the District in March 2007 and is approved or revised as required by California law. The District currently holds approximately \$20 million in unrestricted reserve funds, which it invests in accordance with the Investment Policy.

All investments, including the Permitted Investments and those authorized by law from time to time for investments by public agencies, contain a certain degree of risk. Such risks include, but are not limited to, a lower rate of return than expected and loss or delayed receipt of principal.

The District's Investment Policy may be changed at any time by the Board (subject to the State law provisions relating to authorized investments) and as the California Government Code is amended. There can be no assurance, therefore, that the State law and/or the Investment Policy will not be amended in the future to allow for investments which are currently not permitted under State law or the Investment Policy or that the objectives of the District with respect to investments or its investment holdings at any point in time will not change.

## **Outstanding Indebtedness**

The District has outstanding indebtedness as described below.

***Series 1999A Installment Purchase Agreement.*** The District has entered into an Installment Purchase Agreement (the "Series 1999A Installment Purchase Agreement") dated as of April 1, 1999, the payments under which (the "Series 1999A Installment Payments") are payable subordinate to amounts payable to the Authority under the Westlands Water District DHCCP Activity Agreement. The Series 1999A Installment Payments are applied to the payment of the Westlands Water District Revenue Certificates of Participation, Series 1999 (the "Series 1999A Certificates"). As of December 31, 2008, the Series 1999A Certificates were outstanding in the aggregate principal amount of \$805,000.

***Series 2002A Installment Purchase Agreement.*** The District has entered into an Installment Purchase Agreement (the "Series 2002A Installment Purchase Agreement") dated as of May 1, 2001, the payments under which (the "Series 2002A Installment Payments") are payable subordinate to amounts payable to the Authority under the Westlands Water District DHCCP Activity Agreement. The Series 2002A Installment Payments are applied to the payment of the Westlands Water District Revenue Certificates of Participation, Series 2002A (the "Series 2002A Certificates"). As of December 31, 2008, the Series 2002A Certificates were outstanding in the aggregate principal amount of \$93,050,000.

***Series 2005A Installment Purchase Agreement.*** The District has entered into an Installment Purchase Agreement (the "Series 2005A Installment Purchase Agreement") dated as of December 1, 2004, the payments under which (the "Series 2005A Installment Payments") are payable subordinate to amounts payable to the Authority under the Westlands Water District DHCCP Activity Agreement. The Series 2005A Installment Payments are applied to the payment of the Westlands Water District Revenue Certificates of Participation, Series 2005A (the "Series 2005A Certificates"). As of December 31, 2008, the Series 2005A Certificates were outstanding in the aggregate principal amount of \$54,225,000.

***Series 2007A Installment Purchase Agreement.*** The District has entered into an Installment Purchase Agreement (the "Series 2007A Installment Purchase Agreement") dated as of December 1, 2006, the payments under which (the "Series 2007A Installment Payments") are payable subordinate to amounts payable to the Authority under the Westlands Water District DHCCP Activity Agreement. The

Series 2007A Installment Payments are applied to the payment of the Westlands Water District Revenue Certificates of Participation, Series 2007A (the "Series 2007A Certificates"). As of December 31, 2008, the Series 2007A Certificates were outstanding in the aggregate principal amount of \$36,180,000.

***Series 2007B Installment Purchase Agreement.*** The District has entered into an Installment Purchase Agreement (the "Series 2007B Installment Purchase Agreement") dated as of November 1, 2007, the payments under which (the "Series 2007B Installment Payments") are payable subordinate to amounts payable to the Authority under the Westlands Water District DHCCP Activity Agreement. The Series 2007B Installment Payments are applied to the payment of the Westlands Water District Revenue Certificates of Participation, Series 2007B (the "Series 2007B Certificates"). As of December 31, 2008, the Series 2007B Certificates were outstanding in the aggregate principal amount of \$20,595,000.

***Series 2008A Installment Purchase Agreement.*** The District has entered into an Installment Purchase Agreement (the "Series 2008A Installment Purchase Agreement") dated as of March 1, 2008, the payments under which (the "Series 2008A Installment Payments") are payable subordinate to amounts payable to the Authority under the Westlands Water District DHCCP Activity Agreement. The Series 2008A Installment Payments are applied to the payment of the Westlands Water District Revenue Certificates of Participation, Series 2008A (the "Series 2008A Certificates"). As of December 31, 2008, the Series 2008A Certificates were outstanding in the aggregate principal amount of \$30,065,000.

***Interest Rate Swap Agreement.*** On August 26, 2005, the District entered into an interest rate swap agreement (the "Series 2005B Swap Agreement") with Citibank, N.A., New York ("Citibank") in connection with the execution and delivery of certain certificates of participation (the "Series 2005B Certificates"). Under the Series 2005B Swap Agreement, the District expected to effectively fix its interest rate exposure with respect to the Series 2005B Certificates taken together with the Series 2005B Swap Agreement, without affecting the nature of the District's obligations to make payments on the Series 2005B Certificates.

In connection with the refunding of the Series 2005B Certificates from the proceeds of the Series 2008A Certificates, the District entered into an amended and restated confirmation, dated as of April 30, 2008 (the "Amended and Restated Confirmation" and together with the Series 2005B Swap Agreement, the "Amended 2005 Swap Agreement") which modified, among other provisions, the fixed rate payable by the District under the Series 2005B Swap Agreement in an effort to effectively fix the District's interest rate exposure with respect to certain Series 2008A Certificates. The presence of the Amended 2005 Swap Agreement will not affect the District's obligations to make payments to the Authority under the Westlands Water District DHCCP Activity Agreement. The obligation of the District to make such scheduled payments to Citibank under the Amended 2005 Swap Agreement is subordinate to the obligation of the District to make payments to the Authority under the Westlands Water District DHCCP Activity Agreement.

Under certain circumstances, the Amended 2005 Swap Agreement may be terminated and the District may be required to make a substantial termination payment to Citibank. Any such termination payment owed by the District would be payable on a basis that is subordinate to the scheduled payments under the Amended 2005 Swap Agreement. Under certain circumstances, Citibank may be obligated to make a payment to the District under the Amended 2005 Swap Agreement that is less than the interest due on the associated Series 2008A Certificates to which the Amended 2005 Swap Agreement relates. In such event, the District would be obligated to pay such insufficiency from Revenues.

The agreement by Citibank to pay certain amounts to the District pursuant to the Amended 2005 Swap Agreement does not alter or affect the District's obligation to pay the scheduled payments under the Amended 2005 Swap Agreement from which the principal and interest with respect to the Series 2008A

Certificates are payable. Neither the owners of the Series 2008A Certificates nor any other person (other than the District) shall have any rights under the Amended 2005 Swap Agreement or against Citibank.

***Joint Powers Agencies Obligations.*** The District is a member of the Authority, a California joint exercise of powers agency, formed in 1990. In 1990, the Authority issued bonds for the purpose of financing the costs of construction of improvements to the Bureau's Tracy Pumping Plant (the "Authority Bonds"). In connection with the issuance of the Authority Bonds, the District entered into a Project Agreement pursuant to which the District agreed to pay certain amounts to the Authority for use by the Authority to pay debt service on the Authority Bonds. The District's repayment obligation to the Authority under the Project Agreement was completed in October 2008.

The Authority is issuing certain Revenue Notes (DHCCP Development Project), Series 2009A in the aggregate principal amount of \$50,000,000 (the "Notes"). In connection with the issuance of the Notes, the District will enter into the Westlands Water District DHCCP Activity Agreement. Pursuant to the Westlands Water District DHCCP Activity Agreement, the District is obligated to pay all principal of and interest due on the Notes, subject to reimbursement of certain amounts by other Authority members. See the caption "SECURITY FOR THE NOTES" in the Official Statement.

***Bureau Contracts.*** The District has outstanding indebtedness to the Bureau under the 1965 Contract for distribution and drainage collector systems in the approximate principal amount of \$37,913,837, which is payable in semi-annual installments of \$1,991,357 and which mature in 2018. The 1965 Contract is a general obligation of the District and is payable from assessments on land within the District. The 1965 Contract does not contain a priority of payment provision.

***Other Contracts.*** The District has entered into a 1990 Proposition 44 Loan ("Prop. 44 Loan"), an unsecured obligation to the State of California under the Agricultural Drainage Water Management Loan Program. The outstanding principal amount is \$142,262, which is payable in annual installments of \$76,824 through August 13, 2010, including interest at 3.60% per annum. The Prop. 44 Loan is an obligation of the District as a whole but does not contain a priority of payment provision. Repayment of the Prop. 44 Loan is subordinate to amounts payable to the Authority under the Westlands Water District DHCCP Activity Agreement. The District has also entered into the 1995 Irrigation System Improvement Program, a State of California Revolving Fund Loan Program, an unsecured obligation of the District which is collateralized by lease payments from water users on irrigation equipment in the approximate principal amount of \$466,092, which is payable in annual installments of \$65,844 through 2016, including interest at 2.80% per annum, and the 1998 Irrigation Improvement Project, a State of California Revolving Fund Loan Program an unsecured obligation of the District which is collateralized by lease payment from water users on irrigation equipment in the approximate principal amount of \$2,814,917, which is payable in annual installments of approximately \$323,293 through 2019, including interest at 2.60% per annum. These State Revolving Funds loans and obligations of the District are payable subordinate to the amounts payable to the Authority under the Westlands Water District DHCCP Activity Agreement.

## **Future Financings**

***Additional Program Elements.*** The current District water acquisition program (the "Program") contemplates acquiring additional long-term Supplemental Water entitlements. If certain elements of the Program are implemented, the District would expect to enter into additional Contracts to finance such components.

***District Distribution System Expansion.*** In addition, 70,000 acres of the District’s service area is served by temporary irrigation systems installed by District landowners. The District may, at some point in the future, elect to construct permanent facilities to serve these lands, although there are not currently any plans to do so at this time. If such facilities are constructed, the District may elect to enter into additional Contracts to finance them.

***Drainage Facilities.*** In connection with current drainage activities (see the caption “— Drainage”), the District may determine to undertake the development of capital activities. If undertaken, the District may elect to enter into additional Contracts to finance such capital activities.

***DHCCP.*** Pursuant to a Memorandum of Agreement (the “MOA”), dated December 10, 2008, the Authority, the California Department of Water Resources (“DWR”), the Bureau, the Santa Clara Valley Water District (a member of the Authority referred to as “SCVWD”), the State Water Project Contractors Authority (the “SWPCA”), the Metropolitan Water District of Southern California, (“MWD”) and the Kern County Water Agency (“KCWA”) (each a member of the SWPCA), and the District (a member of the Authority) have agreed to undertake the planning, the preliminary design and environmental compliance activities with respect to certain water supply facilities referred to as the Delta Habitat Conservation and Conveyance Program (“DHCCP”). The current DWR estimate cost of the preliminary phase of the DHCCP is \$140,000,000 (“DHCCP Development Costs”).

Pursuant to the MOA, 50% of the DHCCP Development Costs are allocated to the Authority (including the District and SCVWD) (the “Federal Share”) with the remaining 50% of such costs being allocated to DWR (including SWPCA, MWD and KCWA).

The Note proceeds, together with cash contributed by certain Authority members, cash and in kind services contributed by the Bureau and certain prepayments of obligations owed by certain Authority members to the Bureau, are expected by the Authority to fully fund the current estimated share of DHCCP Development Costs allocated to the Authority and its members.

In the event that the District ultimately agrees to participation in construction of the DHCCP, the District could be obligated to pay up to \$860 million of such costs, based on current cost estimates and assuming that all State and federal water contractors that receive water through DWR and CVP pumping plants in the Bay-Delta share in the cost of the DHCCP on a per-acre foot basis. In such circumstances, the District would likely finance all or a portion of such cost, either directly or through the Authority.

## **STATE AND FEDERAL REGULATORY ACTIVITIES**

### **Central Valley Project Matters**

***Central Valley Project Improvement Act.*** The Central Valley Project Improvement Act (Public Law 102-575 Title 34, “CVPIA”) became law in 1992 and represents one of the most sweeping changes to federal reclamation law in recent history. Its principal stated goals include protecting, restoring and enhancing fish, wildlife and related Central Valley and Trinity River habitats while addressing CVP impacts on fish, wildlife and habitats. It makes use of CVP water for fish and wildlife purposes an equal priority to irrigation and municipal and industrial uses. To do so, it allocates 800,000 acre-feet of CVP yield for fish, wildlife and habitat restoration, prescribes minimum flow for the Trinity River and requires minimum deliveries to wildlife refuges. As a result, agricultural water supplies have been reduced in most years.

The CVPIA established a \$50,000,000 a year fund to carry out habitat restoration and environmental programs. Among the funding sources for this restoration fund is a surcharge on water

users of \$6.00 per acre foot for agricultural water and \$12.00 per acre foot for municipal and industrial water (escalated from 1992 price levels). As of October 1, 2008, the charge was \$9.06 for agricultural water and \$18.12 for municipal and industrial water.

CVPIA required the Bureau and the United States Fish and Wildlife Service (“USFWS”) to prepare a programmatic environmental impact statement (PEIS), in order to analyze the mandates of the CVPIA and the renewal of water service contracts. The programmatic environmental impact statement, which was completed in 1999, serves as the basis for future, more localized environmental studies on CVP activities in localized areas, such as contract renewal.

The CVPIA also modified provisions of prior law regarding water supply contracts, such as the District’s Water Contracts. The renewal period for existing long-term contracts was reduced from a maximum of 40 years to 25 years, and subsequent renewals were purportedly made subject to the discretion of the Department of the Interior. Long-term contracts which expired since 1992 have been continued under interim renewal contracts as authorized by CVPIA. In 1997, continuing long-term contractors were offered a binding agreement to renew their contracts subject to CVPIA terms. By signing the binding agreement, CVP contractors such as the District avoided payment of an additional surcharge otherwise required by the CVPIA.

**Water Costs.** The cost of Central Valley Project water has increased rapidly since the enactment of the CVPIA. As noted above, the CVPIA has imposed a per-acre-foot surcharge imposed on water purchased throughout the Central Valley Project, which, as of October 1, 2008, amounts to \$9.06.

Central Valley Project water rates have also increased to help pay for the CVPIA’s programmatic environmental impact statement and other costs mandated by the CVPIA. Less Central Valley Project water is being sold as a result of the CVPIA, but the operations and maintenance costs associated with the Central Valley Project have not been reduced. Thus, operations and maintenance costs per acre foot have increased.

## **Bay-Delta Matters**

Most of California’s developed water supply comes from streams tributary to the Bay-Delta, and much of that water is exported by large pumping plants in the southern part of the Bay-Delta. Beset by degraded environmental conditions, conflicting federal and State laws, and extensive litigation, the Bay-Delta had become a bottleneck to water supply for the CVP and State Water Project. In December, 1994, key federal and State agencies, together with stakeholders in the water community representing agricultural, urban and environmental perspectives, entered into a historic document entitled “Principles for Agreement on Bay/Delta Standards Between the State of California and the Federal Government” (the “Bay/Delta Accord”). Hailed as a truce in California’s water wars, the Bay/Delta Accord outlined new water quality standards designed to restore and protect the Bay-Delta estuary and aquatic species, including anadromous fish. It was expected to reduce the water available for consumptive uses by an average of 300,000-400,000 acre-feet per year, but to assure water users that no additional reductions would occur for purposes of implementing statutes, such as the federal Endangered Species Act. The document also called for a cooperative State-federal program, known as “CALFED.” The CALFED Program began in May 1995. The CALFED Program is a cooperative, interagency effort involving 18 State and federal agencies with management and regulatory responsibilities in the Bay-Delta Estuary, and was established to develop a long-term comprehensive plan to restore the ecological health and improve water management for beneficial uses of the Bay-Delta system. The four primary objectives of the CALFED Program are to:

- \* Provide improved water quality for all beneficial uses;

- \* Improve and increase aquatic and terrestrial habitats and improve ecological functions in the Bay-Delta to support sustainable populations of diverse and valuable plant and animal species;
- \* Reduce the imbalance between Bay-Delta water supplies and current and projected beneficial uses dependent on the Bay-Delta system;
- \* Reduce the risk to land use and associated economic activities, water supply, infrastructure, and the ecosystem from catastrophic breaching of Delta levees.

The CALFED Program was divided into three phases. In the first phase, concluded in September, 1996, the CALFED Program developed a range of alternatives for achieving long-term solutions to the problems of the Bay-Delta Estuary.

During Phase II, the CALFED Program conducted a comprehensive programmatic environmental review process. A draft programmatic EIS/EIR and interim Phase II Report identifying three draft alternatives and program plans was released on March 16, 1998. The release of the documents was followed by a public comment period, and on June 25, 1999, CALFED again released a draft programmatic EIS/EIR followed by a 90-day comment period. The final programmatic EIS/EIR was released July 21, 2000 followed by the Record of Decision (“ROD”) on August 28, 2000. The ROD completed Phase II.

The ROD states that one of the primary goals of the CALFED Program is to improve the reliability of California’s water supply, and implementation of the ROD will provide greater water supply reliability for the District. During the first four years of Stage 1 it was anticipated that implementation of actions described by the ROD would result in normal water years in allocations to CVP south-of-Delta agricultural contractors of 65 – 70 percent of their contracted amounts (or entitlements). In addition, the ROD prescribes actions that are to be taken to reduce the risk that additional environmental regulations will reduce the District’s water supply, including the creation of an Environmental Water Account. The Environmental Water Account is administered by the State and federal fishery agencies and is used to provide additional water for the protection and restoration of fish species listed under the State and federal endangered species acts beyond protection provided by a baseline level of protection described by the ROD.

Federal agency participation in the CALFED Program was re-authorized in October 2004 through Fiscal Year 2010 by enactment of Public Law 108-361.

***State Water Resources Control Board.*** On May 22, 1995, the SWRCB adopted a new Water Quality Control Plan for the Delta. The plan contains water quality objectives, outflow requirements, and project operation constraints consistent with the Bay/Delta Accord. The SWRCB then issued an interim order, Water Rights Order 95-6, which amended the previous water rights orders to remove the inconsistencies with the May 1995 Water Quality Control Plan. The State Water Project and the CVP have agreed to accept responsibility for meeting the Water Quality Control Plan objectives until the SWRCB conducts a broader review of water rights permits. In December 2003, the SWRCB initiated a periodic review of the 1995 Water Quality Control Plan to determine whether it provides adequate protection for existing beneficial uses of water. The SWRCB has completed that review, and it adopted an amended Water Quality Control Plan for the Delta on December 13, 2006. The SWRCB made what it described as “minor” changes to the plan adopted in 1995. These changes included updating the plan of implementation and monitoring program, as well as new descriptions of upcoming SWRCB actions, and new recommendations to other agencies. The Office of Administration Law approved the 2006 plan on June 27, 2007.



**SWRCB Decision 1641.** From July 1, 1998 through December 27, 1999, the SWRCB conducted Phases 1 through 7 of the Bay/Delta Water Rights Hearing. On December 29, 1999, the SWRCB adopted Water Right Decision 1641 (“D-1641”), determining partial responsibility for meeting the objectives in the 1995 Water Quality Control Plan and resolving other related issues. Among these were the circumstances under which the CVP and State Water Project (“SWP”) could jointly utilize their respective points of diversions in the Delta. Use of this “joint point” of diversion is intended, among other things, to ameliorate existing water supply shortages in the CVP export area. In D-1641, the SWRCB assigned responsibility for specified periods to water users (including the Bureau and the California Department of Water Resources) in the watersheds of the San Joaquin River above Vernalis, the Mokelumne River, Putah Creek, Cache Creek, and the Bear River. These responsibilities require that the water users in these watersheds will contribute specified amounts of water, and the Bureau and the Department of Water Resources will ensure that the objectives are met in the Delta. To meet potential responsibilities that were not assigned by D-1641, Conditions 1 and 2 thereof requires that the Bureau and Department of Water Resources temporarily meet those objectives. Conditions 1 and 2 of D-1641 also require that the Bureau and the Department of Water Resources meet certain objectives that the SWRCB did not contemplate assigning to other parties, such as export limits and gate closure requirements. Conditions 1 and 2 will remain in effect only until the SWRCB makes further decisions assigning responsibilities of water right holders in areas where the potential responsibilities have not yet been determined.

Phase 8 of the Bay/Delta Water Rights Hearing was intended to address responsibility, if any, of users in the Sacramento River watershed for meeting the objectives in the 1995 Water Quality Control Plan. In early 2001, an agreement was reached among the Bureau, the Department of Water Resources, the Northern California Water Association (on behalf of water users in the Sacramento River watershed), the San Luis & Delta-Mendota Water Authority (on behalf of south-of-Delta CVP contractors), the State Water Contractors (on behalf of south-of-Delta State Water Project contractors), and the Contra Costa Water District that contemplates the development of water projects in the Sacramento Valley that would be developed, *inter alia*, to provide water to the SWP and CVP to help meet objectives in the 1995 Water Quality Control Plan.

Various legal challenges to D-1641 were resolved in a published appellate decision, in which the court of appeal largely upheld D-1641. On remand, the SWRCB has addressed those aspects of D-1641 that the court of appeal found deficient, through the amendments to the Water Quality Control Plan described above, and other proceedings.

**ESA Litigation.** Since the early 1990’s, the coordinated operations of the CVP and SWP have been subject to regulation under the federal Endangered Species Act, to limit impacts of project operations on fish listed as threatened or endangered. The projects operate under the terms of permits known as biological opinions, which are issued by the United States Fish and Wildlife Service and the National Marine Fisheries Service, an agency within the United States Department of Commerce. The biological opinions authorize the take of the listed fish caused by project operations, in accordance with specified conditions.

In May 2007, the federal district court in Fresno ruled that the then current biological opinion applicable to a threatened fish known as the delta smelt was legally deficient, and remanded it to the United States Fish and Wildlife Service for further review and a new biological opinion. The Fish and Wildlife Service issued a new biological opinion on December 15, 2008. That biological opinion concluded that CVP and SWP operations as described would jeopardize the continued existence of the delta smelt, contrary to the requirements of the federal Endangered Species Act. However, the Fish and Wildlife Service concluded that jeopardy could be avoided through implementation of alternatives to proposed operations. The Bureau is currently operating the CVP under the take authorization provided by

the new biological opinion. The measures required by the delta smelt biological opinion will likely reduce the level of pumping from the Bay-Delta, and therefore reduce the level of CVP water deliveries to the District and other south-of-Delta contractors. Another measure would require maintaining increased levels of fresh water outflow to the ocean in the fall. The amount of the delivery reductions will depend on a variety of factors, including hydrological conditions, the estimated abundance of the delta smelt, and the movement of the delta smelt within the Bay-Delta. The Bureau has questioned the need and justification for the fall outflow measure in the alternative identified by the Fish and Wildlife Service, and further discussions between the agencies regarding that term appear likely. In March 2009, several water districts filed suit in the federal district court in Fresno challenging the measures in the new biological opinion as unduly restrictive.

In April 2008, the federal district court in Fresno ruled that the current biological opinion applicable to threatened and endangered salmon and steelhead is legally deficient, and remanded it to the National Marine Fisheries Service for further review and a new biological opinion. Pending completion of a new biological opinion, however, the court left in place the biological opinion's authorization for CVP and SWP operations to cause take of the salmon and steelhead species. The projects are being operated under the terms of that biological opinion. A new salmon and steelhead biological opinion is due June 2, 2009. The National Marine Fisheries Service released a draft salmon and steelhead biological opinion dated December 11, 2008. That draft opinion concludes that proposed project operations would jeopardize salmon, steelhead and green sturgeon. The draft opinion is incomplete and does not describe alternative project operations that the National Marine Fisheries Service believes would avoid jeopardy. Such an alternative is apparently the subject of ongoing discussions between the National Marine Fisheries Service and the Bureau. What impacts, if any, the terms of the new biological opinion that is ultimately issued by the National Marine Fisheries Service will have on CVP water deliveries is uncertain.

The Fish and Wildlife Service is currently considering whether to recommend another fish species, the longfin smelt, for listing under the federal Endangered Species Act. In March 2009, the California Fish and Game Commission decided to list the longfin smelt as threatened under the California Endangered Species Act. The California Department of Water Resources has obtained a state permit for take of longfin smelt from the California Department of Fish and Game. In issuing that permit, the Department of Fish and Game imposed potential limitations on project operations that are similar to those imposed in the federal biological opinion for delta smelt. The application of the take prohibition in State law to State and federal agencies, and the necessity for such a take permit, is being challenged in State court litigation filed by water contractors. Such litigation is pending in the Superior Court for the County of Los Angeles.

#### **CERTAIN FACTORS AFFECTING AGRICULTURE GENERALLY**

The District's ability to make payments to the Authority under the Westlands Water District DHCCP Activity Agreement is dependent on the collection of water rates and standby charges from the water rate payers and owners of the land within the District. Substantially all of the land within the District is under commercial agricultural cultivation. A number of factors, including but not limited to weather conditions, crop prices, disease and crop predation, federal and State agricultural and environmental policies, federal reclamation law policies, national and international trade policies, soil quality, drainage or other soil conditions, operational conditions as well as general economic conditions may adversely affect the ability of rate payers or property owners to pay water rates or standby charges. If one or a combination of these factors adversely impacts the ability of the owners or water users to make such payments, the District expects that collection of water and/or standby charges in the District would decline. The District does not believe that such decline would adversely affect the ability of the District

to make payments to the Authority under the Westlands Water District DHCCP Activity Agreement unless such factors extended for a substantial period of time.

## **LITIGATION**

There is no action, suit or proceeding known to be pending or threatened, restraining or enjoining the execution or delivery of the Notes, the Westlands Water District DHCCP Activity Agreement or the Indenture of Trust, or in any way contesting or affecting the validity of the foregoing or any proceedings of the District taken with respect to any of the foregoing.

There is no litigation pending or, to the knowledge of the District, threatened, questioning the corporate existence of the District, or the title of the officers of the District to their respective offices, or the power and authority of the District to execute the Westlands Water District DHCCP Activity Agreement and make the payments thereunder. There is no litigation pending, or to the knowledge of the District, threatened, questioning or affecting in any material respect any of the financial information or projections with respect to the District contained in the Official Statement.

## **CONSTITUTIONAL AND STATUTORY LIMITATIONS ON APPROPRIATIONS AND FEES**

### **Article XIII B**

The California Constitution limits the annual appropriations of the State and of any city, county, school district, authority or other political subdivision of the State to the level of appropriations of the particular governmental entity for the prior fiscal year, as adjusted for changes in the cost of living and population. The “base year” for establishing such appropriation limit is the 1978-1979 fiscal year and the limit is to be adjusted annually to reflect changes in population and consumer prices. Adjustments in the appropriations limit of an entity may also be made if (i) the financial responsibility for a service is transferred to another public entity or to a private entity, (ii) the financial source for the provision of services is transferred from taxes to other revenues, or (iii) the voters of the entity approve a change in the limit for a period of time not to exceed four years.

Appropriations subject to Article XIII B generally include the proceeds of taxes levied by the State or other entity of local government, exclusive of certain State subventions and refunds of taxes. “Proceeds of taxes” include, but are not limited to, all tax revenues and the proceeds to an entity of government from (i) regulatory licenses, user charges, and user fees (but only to the extent such proceeds exceed the cost of providing the service or regulation), and (ii) the investment of tax revenues. Article XIII B includes a requirement that if an entity’s revenues in any year exceed the amounts permitted to be spent, the excess would have to be returned by revising tax rates or fee schedules over the subsequent two years.

Certain expenditures are excluded from the appropriations limit including payments of indebtedness existing or legally authorized as of January 1, 1979, or of bonded indebtedness thereafter approved by the voters and payments required to comply with court or federal mandates which without discretion require an expenditure for additional services or which unavoidably make the providing of existing services more costly.

The District is of the opinion that the rates imposed by the District do not exceed the costs the District reasonably bears in providing water service. The District will covenant in the Westlands Water District DHCCP Activity Agreement that, to the fullest extent permitted by law, it will prescribe rates and

charges sufficient to provide payments to the Authority under the Westlands Water District DHCCP Activity Agreement in each year.

### **Proposition 218**

**General.** An initiative measure entitled the “Right to Vote on Taxes Act” (the “Initiative”) was approved by the voters of the State of California at the November 5, 1996 general election. The Initiative added Article XIIC and Article XIID to the California Constitution. According to the “Title and Summary” of the Initiative prepared by the California Attorney General, the Initiative limits “the authority of local governments to impose taxes and property-related assessments, fees and charges.”

**Article XIID.** Article XIID defines the terms “fee” and “charge” to mean “any levy other than an ad valorem tax, a special tax or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including user fees or charges for a property-related service.” A “property-related service” is defined as “a public service having a direct relationship to property ownership.” Article XIID further provides that reliance by an agency on any parcel map (including an assessor’s parcel map) may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership.

Article XIID requires that any agency imposing or increasing any property-related fee or charge must provide written notice thereof to the record owner of each identified parcel upon which such fee or charge is to be imposed and must conduct a public hearing with respect thereto. The proposed fee or charge may not be imposed or increased if a majority of owners of the identified parcels file written protests against it. As a result, if and to the extent that a fee or charge imposed by a local government for water service is ultimately determined to be a “fee” or “charge” as defined in Article XIID, the local government’s ability to increase such fee or charge may be limited by a majority protest.

In addition, Article XIID includes a number of limitations applicable to existing fees and charges including provisions to the effect that (i) revenues derived from the fee or charge shall not exceed the funds required to provide the property-related service, (ii) such revenues shall not be used for any purpose other than that for which the fee or charge was imposed, (iii) the amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel and (iv) no such fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Property-related fees or charges based on potential or future use of a service are not permitted.

Article XIID established procedural requirements for the imposition of assessments, which are defined as any charge on real property for a special benefit conferred upon the real property. Standby charges are classified as assessments. Procedural requirements include the conducting of a public hearing and an election by mailed ballot, with notice to the record owner of each parcel subject to the assessment. The assessment may not be imposed if a majority of the ballots returned oppose the assessment, with each ballot weighted according to the proportional financial obligation of the affected parcel.

Article XIID conditions the imposition or increase of any “fee” or “charge” upon there being no written majority protest after a required public hearing and, for fees and charges other than for sewer, water or refuse collection services, voter approval. Article XIID defines “fee” or “charge” to mean levies (other than ad valorem or special taxes or assessments) imposed by a local government upon a parcel or upon a person as an incident of the ownership or tenancy of real property, including a user fee or charge for a “property-related service.” One of the requirements of Article XIID is that before a property-related fee or charge may be imposed or increased, a public hearing upon the proposed fee or charge must be held and mailed notice sent to the record owner of each identified parcel of land upon

which the fee or charge is proposed for imposition. In the public hearing if written protests of the proposed fee or charge are presented by a majority of the owners of affected identified parcel(s), an agency may not impose the fee or charge.

Based upon the California Court of Appeals decision in *Howard Jarvis Taxpayers Association v. City of Los Angeles*, 85 Cal. App. 4th 79 (2000), which was denied review by the California Supreme Court, it was generally believed that Article XIID did not apply to charges for water services that are “primarily based on the amount consumed” (i.e., metered water rates), which had been held to be commodity charges related to consumption of the service, not property ownership. The Supreme Court stated in *Bighorn-Desert View Water Agency v. Verjil*, 39 Cal.4th 205 (2006) (the “Bighorn Case”), however, that fees for ongoing water service through an existing connection were property-related fees and charges. The Supreme Court specifically disapproved the holding in *Howard Jarvis Taxpayers Association v. City of Los Angeles* that metered water rates are not subject to Proposition 218.

Commencing with fiscal year 2007-08, the District has complied with the notice, hearing and protest procedures in Article XIID with respect to water rate increases based on the Supreme Court decision in the Bighorn Case. The District has complied with the notice, hearing and protest procedures of Article XIID with respect to assessments described under the caption “THE DISTRICT—District Water Charges—Acreage Charges” since the approval of Article XIID.

**Article XIIC.** Article XIIC provides that the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge and that the power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments. Article XIIC does not define the terms “local tax,” “assessment,” “fee” or “charge,” so it was unclear whether the definitions set forth in Article XIID referred to above are applicable to Article XIIC. Moreover, the provisions of Article XIIC are not expressly limited to local taxes, assessments, fees and charges imposed after November 6, 1996. On July 24, 2006, the Supreme Court held in the Bighorn Case that the provisions of Article XIIC included rates and fees charged for domestic water use. In the decision, the Court noted that the decision did not address whether an initiative to reduce fees and charges could override statutory rate setting obligations. The District does not believe that Article XIIC grants to the voters within the District the power to repeal or reduce the water charges in a manner which would be inconsistent with the contractual obligations of the District. However, there can be no assurance of the availability of particular remedies adequate to protect the Authority under the Westlands Water District DHCCP Activity Agreement. Remedies available to the Authority in the event of a default by the District under the Agreement are dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time-consuming to obtain.

In addition to the specific limitations on remedies contained in the Westlands Water District DHCCP Activity Agreement, the rights and obligations with respect to the Notes, the Indenture of Trust and the Westlands Water District DHCCP Activity Agreement are subject to bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws affecting creditors’ rights, to the application of equitable principles if equitable remedies are sought, and to the exercise of judicial discretion in appropriate cases and to limitations on legal remedies against public agencies in the State. The various opinions of counsel to be delivered with respect to such documents, will be similarly qualified.

The District believes that its current water rates and land based charges comply with the requirements of Proposition 218 and expects that any future water rates and land based charges will comply with Proposition 218’s procedural and substantive requirements to the extent applicable thereto.

**Future Initiatives**

Articles XIIIB, XIIC and XIID were adopted as a measure that qualified for the ballot pursuant to California's initiative process. From time to time other initiatives could be proposed and adopted affecting the District's revenues or ability to increase revenues.

**EXECUTION AND DELIVERY**

The execution and delivery of this Appendix D has been duly authorized by the District.

**WESTLANDS WATER DISTRICT**

By:                     /s/ Jean P. Sagouspe                      
President of the Board of Directors

**EXHIBIT D-1**

**WESTLANDS WATER DISTRICT FINANCIAL STATEMENTS**

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**WESTLANDS WATER DISTRICT**

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**AUDITED FINANCIAL STATEMENTS**

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**YEAR ENDED FEBRUARY 29, 2008**

**WESTLANDS WATER DISTRICT**

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June 20, 2008

Board of Directors  
Westlands Water District  
Fresno, California

#### INDEPENDENT AUDITORS' REPORT

We have audited the accompanying financial statements of Westlands Water District (the "District") as of and for the year ended February 29, 2008 as listed in the table of contents. These financial statements are the responsibility of the District's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audit in accordance with auditing standards and the standards generally accepted in the United States of America applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and the State Controller's Minimum Audit Requirements for California Special Districts. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects the financial position of the Westlands Water District as of February 29, 2008, and the respective changes in financial position and cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America as well as accounting systems prescribed by the State Controller's Office and state regulations governing special districts.

The management's discussion and analysis on pages 2 through 5 are not a required part of the basic financial statements but is supplementary information required by accounting principles generally accepted in the United States of America. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of supplementary information. However, we did not audit the information and express no opinion on it.

In accordance with *Government Auditing Standards*, we have also issued our report dated June 20, 2008, on our consideration of Westlands Water District's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in conjunction with this report in considering the results of our audit.

*Sampson & Sampson*

## **WESTLANDS WATER DISTRICT MANAGEMENT'S DISCUSSION AND ANALYSIS**

### **Overview**

The following management's discussion and analysis of Westlands Water District (the District) provides an overview of the financial activities and transactions for fiscal year 2007-2008 in the context of the requirements of the Governmental Accounting Standards Board No. 34, Basic Financial Statements; Management's Discussion and Analysis for State and Local Governments, as amended. This discussion and analysis should be read in conjunction with the District's audited financial statements and accompanying notes.

### **Financial Reporting and Explanation of Financial Statements**

The District's accounting records are maintained in accordance with generally accepted accounting principles as prescribed by the Governmental Accounting Standards Board (GASB) and, where not in conflict with GASB pronouncements, accounting principles prescribed by the Financial Accounting Standards Board (FASB). The District's financial statements include the statement of net assets, the statement of revenues, expenses and changes in net assets, and the statement of cash flows. The statement of net assets provides information about assets and obligations of the District at a specific point in time. The statement of revenues, expenses and changes in net assets provide information regarding the District's operations during the fiscal year indicated. The statement of cash flows report cash sources and cash uses for operations, capital financing and investing activities.

### **Financial Summary**

The following is a condensed presentation of assets and liabilities as of February 29, 2008 and February 28, 2007:

	<u>2008</u>	<u>2007</u>	<u>% Change</u>
<b>Assets</b>			
Current assets	93,220,020	77,330,576	21%
Utility plant, net of accumulated depreciation	128,184,047	127,948,777	0%
Other assets	252,473,290	238,487,648	6%
Total assets	<u>473,877,357</u>	<u>443,767,001</u>	
<b>Liabilities</b>			
Current liabilities	58,477,977	46,931,611	25%
Debt borrowings, net of current maturities	278,151,019	266,862,453	4%
Other liabilities	8,447,584	8,797,144	(4%)
Total liabilities	<u>345,076,580</u>	<u>322,591,208</u>	
<b>Net Assets</b>			
Total net assets	<u>\$128,800,777</u>	<u>\$121,175,793</u>	6%

### **Current Assets**

Current assets increased in fiscal year 2007-2008 by \$15.9 million or 21%. Approximately \$13.7 million is an increase in cash and cash equivalents which is partially offset by a corresponding increase in accounts payable of \$4.8 million and an increase in deferred revenue of \$5.6 million. Part of the remaining increase in cash and cash equivalents may be attributed to \$1.5 million contribution received from Panoche Energy Center, LLC (PEC), to supplement the District's Expanded Irrigation System Improvement Program (EISIP). Another \$1.8 million was from land lease revenue which will be used to offset land based charges for debt service in the next fiscal year. Prepaid water costs increased by \$1.8 million, primarily for supplemental water purchases carried forward to fiscal year 2008-2009. The balance of the increase in current assets is due to an increase in operating supplies of approximately \$300,000.

## **WESTLANDS WATER DISTRICT MANAGEMENT'S DISCUSSION AND ANALYSIS**

### **Utility Plant**

New utility plant additions total approximately \$3.5 million, including \$2.1 million in depreciable assets reclassified from a property purchased in late fiscal year 2006-2007. Utility plant depreciation for the year was \$3.2 million, resulting in a net increase of \$235,000.

### **Other Assets**

Other assets increased by \$14.0 million, mostly from land and water acquisition activity. Irrigation equipment lease activity decreased by approximately \$1.2 million.

### **Current Liabilities**

Current liabilities increased by 25% or \$11.5 million. Of this amount, \$4.8 million is due to accounts payable, which includes \$2.7 million which will be credited back to water users through water rates in 2008-2009. Year end power expenses accounted for another \$1.7 million with the balance attributable to accrued interest payable. Deferred revenue for water, land-based charges, and land leases accounted for approximately \$5.6 million. The remainder is attributable to the current portion of long-term debt.

### **Debt Borrowings**

Debt borrowings increased by \$11.3 million or 4%. Revenue Certificates of Participation (COP) Series 2007B were issued for \$20.9 million for the purchase of a property in northern California. This increase was partially offset by debt payments of \$9.6 million.

### **Other Liabilities**

Other liabilities decreased by \$350,000 or 4%. This is primarily due to use of funds previously designated for specific purposes.

The following is a condensed presentation of the revenues, expenses and changes in net assets for the fiscal years ended February 29, 2008, and February 28, 2007:

	<u>2008</u>	<u>2007</u>	<u>% Change</u>
<b>Revenues and Expenses</b>			
Operating revenues	\$81,446,180	\$82,285,356	(1%)
Operating expenses	(83,836,899)	(86,871,984)	(4%)
Non-operating gains and losses	10,015,703	6,441,830	56%
Net income	<u>\$7,624,984</u>	<u>\$1,855,202</u>	
<b>Changes in Net Assets</b>			
Net assets – beginning of year	\$121,175,793	\$119,320,591	
Changes in net assets:			
Net income	7,624,984	1,855,202	
Net assets – end of year	<u>\$128,800,777</u>	<u>\$121,175,793</u>	

### **Operating Revenues**

Operating revenues decreased \$839,000, compared to fiscal year 2006-2007. Revenues from water sales decreased due to a 50% contract water supply. Land-based charges revenue also decreased as a result of carryover funds from the prior fiscal year.

**WESTLANDS WATER DISTRICT  
MANAGEMENT'S DISCUSSION AND ANALYSIS**

**Operating Expenses**

Operating expenses decreased by \$3.0 million from the prior fiscal year. The decrease in water purchases of \$6.0 million was partially offset by a \$2.8 million increase in other expenses.

**Non-Operating Gains and Losses**

Non-operating gains and losses increased by \$3.6 million or 56% over fiscal year 2006-2007. COP repayments revenues were up by \$3.2 million. Approximately \$1.3 million of this was due to an increase in land lease revenues with the balance attributable to the increase in charges to landowners for the new debt service to fund long-term water supply. In addition, a \$1.5 million contribution was received from PEC for the EISIP, the District's low interest irrigation equipment lease program. Interest revenues increased by approximately \$0.9 million. These gains were partially offset by an increase in interest expense of \$1.6 million for new debt service requirements.

**Capital Assets**

The District's investment in capital assets (utility plant) as of February 29, 2008, amounts to \$128,184,047 (net of accumulated depreciation). This investment includes land, distribution and drainage system, buildings, vehicles and equipment, but excludes properties acquired under certain land and water acquisition programs. The total increase in the District's investment in capital assets was less than 1%.

	2008	2007
Land	\$ 642,847	\$ 642,847
Construction in Progress	1,472,910	1,467,796
Land Improvements	17,561	17,561
Distribution System	174,178,234	173,180,393
Drainage System	20,433,960	20,433,960
Buildings	4,942,320	4,857,873
Furniture & Fixtures/Information Systems	1,623,733	1,496,589
Communication Equipment	121,052	121,052
Survey Equipment & Small Tools	79,141	79,141
Autos/Trucks	1,501,589	1,392,817
Shop Equipment	410,686	410,686
Field Equipment	1,595,947	1,537,098
Fishing Club Assets	2,140,009	
	<u>209,159,989</u>	<u>205,637,813</u>
Less Accumulated Depreciation	<u>(80,975,942)</u>	<u>(77,689,036)</u>
Net Utility Plant	<u>\$ 128,184,047</u>	<u>\$ 127,948,777</u>

Major capital asset events during the 2007-2008 fiscal year included the following:

- Replacement of a one-mile section of pipeline at a cost of \$963,484.
- Continuation of the SCADA upgrade project was \$34,357.
- Various building improvements totaling \$84,447.
- Computer systems upgrades and replacements reached \$128,932.
- Vehicle replacements totaled \$108,772.
- Field equipment purchases of \$58,849.
- Reclassification of depreciable assets of \$2,129,710 and new additions of \$10,299 for the fishing club.

Additional information on the District's capital assets may be found in Note E.

## **WESTLANDS WATER DISTRICT MANAGEMENT'S DISCUSSION AND ANALYSIS**

### **Long-term Debt**

At the end of fiscal year 2007-2008, the District had outstanding debt of \$285,536,016 which is an increase of 5%. The increase is a result of the issuance of Revenue COP 2007B for the purchase of a property in Yolo County, California, offset partially by current year principal maturities.

Detail on the District's long term debt may be found in Note I.

### **Economic Factors and Next Year's Budget and Rates**

The District completed negotiations with the Bureau of Reclamation (Reclamation) on an interim water service contract, effective January 1, 2008, for an initial term of 26 months. An interim contract is required because long-term contract renewals have been delayed due to Reclamation's re-initiation of formal consultation with the Fish and Wildlife Service on the Central Valley Project's (CVP) Operation Criteria and Plan for the Delta. CVP water delivered under the interim water service contract is subject to Reclamation's Cost of Service Rate, which includes operations, maintenance and capital facilities costs.

The District's contracts with Reclamation entitles it to receive up to 1,191,383 acre feet of water per fiscal year. The District received only 50% of its entitlement in the 2007-2008 fiscal year. Due to continuing dry conditions, and as a result of a court decision regarding the Delta smelt, the 2008-2009 Budget and rates were based upon a 45% water supply allocation (because of critically dry hydrologic conditions, on June 2, 2008, the allocation was lowered to 40%). The increase in rates due to the lower water supply, as well as the new interim contract, ranged from 5% to 8%.

The District is continually engaged in efforts to increase its water supply from outside sources. The annual debt service to finance these acquisitions is collected through a land based charge. The 2008-2009 rate for long-term water supply acquisitions increased \$4.5593 per acre over the 2007-2008 rate.

**WESTLANDS WATER DISTRICT  
STATEMENT OF NET ASSETS  
FEBRUARY 29, 2008**

		Enterprise Funds	
	Water District	Other	Total
<b>Assets</b>			
Current assets:			
Cash and cash equivalents	\$55,198,573		\$55,198,573
Accounts receivable – water users and others	20,996,240		20,996,240
Operating supplies	3,323,361		3,323,361
Prepaid water and other current assets	13,701,846		13,701,846
Total current assets	93,220,020		93,220,020
Utility plant, net of accumulated depreciation	126,127,965	2,056,082	128,184,047
Other assets:			
Restricted assets	17,256,769		17,256,769
Advances to water users	720,000		720,000
Intertie contributed funds	15,291,399		15,291,399
Real property held	105,661,436		105,661,436
Water rights, net of accumulated amortization	102,547,063		102,547,063
Long term notes and financing receivables	8,382,328		8,382,328
Debt issue costs, net of accumulated amortization	2,578,395		2,578,395
Due from other funds	35,900		35,900
Total other assets	252,473,290		252,473,290
Total assets	471,821,275	2,056,082	473,877,357
<b>Liabilities</b>			
Current liabilities:			
Accounts payable and accrued expenses	28,725,665		28,725,665
Accrued payroll and related liabilities	647,252		647,252
Deferred revenue	19,546,151		19,546,151
Current maturities of debt borrowings	9,558,909		9,558,909
Total current liabilities	58,477,977		58,477,977
Debt borrowings, net of current maturities	278,151,019		278,151,019
Payable from designated or restricted assets	7,691,684		7,691,684
Water exchange payable and other water user deposits	720,000		720,000
Due to other funds		35,900	35,900
Total liabilities	345,040,680	35,900	345,076,580
<b>Net Assets</b>			
Invested in capital assets, net of related debt	53,772,005	2,056,082	55,828,087
Restricted for specific purposes	14,458,940		14,458,940
Unrestricted	58,549,650	(35,900)	58,513,750
Total net assets	\$126,780,595	\$2,020,182	\$128,800,777

See independent auditors' report and notes to financial statements.



**WESTLANDS WATER DISTRICT**  
**STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET ASSETS**  
**YEAR ENDED FEBRUARY 29, 2008**

	Water District	Enterprise Funds Other	Total
<b>Operating Revenues</b>			
Irrigation water sales	\$78,343,795		\$78,343,795
Municipal and industrial water sales	2,237,998		2,237,998
Land based charges	571,117		571,117
Other operating revenues	140,821	152,450	293,271
Total operating revenues	<u>81,293,731</u>	<u>152,450</u>	<u>81,446,181</u>
<b>Operating Expenses</b>			
Purchased water	60,723,897		60,723,897
Pumping	217,412		217,412
Transmission and distribution	4,172,752		4,172,752
Customer accounts	1,956,625		1,956,625
General and administrative	9,181,439		9,181,439
Depreciation and amortization of water rights	7,323,653	83,927	7,407,580
Other operating expenses	381	176,813	177,194
Total operating expenses	<u>83,576,159</u>	<u>260,740</u>	<u>83,836,899</u>
Loss from operations	<u>(2,282,428)</u>	<u>(108,290)</u>	<u>(2,390,718)</u>
<b>Non-operating revenues (expenses)</b>			
Grants and related revenue	1,507,708		1,507,708
Investment income	3,517,648		3,517,648
Interest expense	(10,724,870)		(10,724,870)
Contract repayment	3,878,164		3,878,164
COP repayment	10,649,408		10,649,408
Miscellaneous	1,187,644		1,187,644
Total non-operating revenues (expenses)	<u>10,015,702</u>	<u></u>	<u>10,015,702</u>
Revenues over (under) expenses	7,733,274	(108,290)	7,624,984
Interfund transfers			
Depreciable assets	(2,129,710)	2,129,710	
Transfer	1,238	(1,238)	
Net increase in net assets	5,604,802	2,020,182	7,624,984
Net assets – beginning of year	<u>121,175,793</u>	<u></u>	<u>121,175,793</u>
Net assets – end of year	<u>\$126,780,595</u>	<u>\$2,020,182</u>	<u>\$128,800,777</u>

See independent auditors' report and notes to financial statements.

**WESTLANDS WATER DISTRICT  
STATEMENT OF CASH FLOWS  
YEAR ENDED FEBRUARY 29, 2008**

	Water District	Enterprise Funds Other	Total
<b>Cash flows from operating activities:</b>			
Cash received from water sales and related activities	\$88,194,387	\$	\$88,194,387
Cash received from other operating activities	140,821	152,450	293,271
Cash payments for water purchases and related activities	(62,496,639)		(62,496,639)
Cash payments to other vendors for other operating activities	(4,323,849)	(129,653)	(4,453,502)
Cash payments to employees and employee benefit programs	(6,698,731)	(47,160)	(6,745,891)
Net cash provided (used) by operating activities	14,815,989	(24,363)	14,791,626
<b>Cash flows from investing activities:</b>			
Investment income	3,333,199		3,333,199
Loans made for financing receivables	(2,378,248)		(2,378,248)
Loans made for notes receivables	(1,400,000)		(1,400,000)
Principal payments received from financing receivables	3,456,979		3,456,979
Principal payments received from intertie project loans	177,899		177,899
Principal payments received from long-term notes receivable	23,473		23,473
Net cash provided by investing activities	3,213,302		3,213,302
<b>Cash flows from noncapital financing activities:</b>			
Transfer from other funds	1,238	35,900	37,138
Transfer to other funds	(35,900)	(1,238)	(37,138)
Proceeds from grants and other	2,695,353		2,695,353
Net cash provided by noncapital financing activities	2,660,691	34,662	2,695,353
<b>Cash flows from capital and related financing activities:</b>			
Proceeds from capital repayment	3,878,164		3,878,164
Proceeds from COP repayment	10,649,408		10,649,408
Proceeds from debt borrowings	20,847,475		20,847,475
Principal payments on debt borrowings	(8,415,706)		(8,415,706)
Interest payments on debt borrowings	(10,724,870)		(10,724,870)
Additions to debt issue costs	(384,876)		(384,876)
Amortization of debt issue costs	122,756		122,756
Acquisition and construction of utility plant, net of disposals	(1,383,673)	(10,299)	(1,393,972)
Purchase of water rights	(569,407)		(569,407)
Purchase of real property held, net of disposals	(18,643,412)		(18,643,412)
Net changes in payables from restricted/designated assets	(340,460)		(340,460)
Net cash used by capital and financing activities	(4,964,601)	(10,299)	(4,974,900)
Net increase in cash and cash equivalents	15,725,381		15,725,381
Cash and cash equivalents – beginning of year (including \$15,241,862 reported as restricted assets)	56,729,961		56,729,961
Cash and cash equivalents – end of year (including \$17,256,769 reported as restricted assets)	\$72,455,342	\$	\$72,455,342

See independent auditors' report and notes to financial statements.

**WESTLANDS WATER DISTRICT  
STATEMENT OF CASH FLOWS  
YEAR ENDED FEBRUARY 29, 2008**

	Enterprise Funds		
	Water District	Other	Total
<b>Reconciliation of operating income to net cash provided by operating activities:</b>			
Loss from operations	(\$2,282,428)	(\$108,290)	(\$2,390,718)
Adjustments to reconcile operating income to net cash provided (used) by operating activities:			
Depreciation and amortization of water rights	7,323,652	83,927	7,407,579
Changes in operating assets and liabilities			
Accounts receivable – water users and others	1,487,003		1,487,003
Operating supplies	(297,659)		(297,659)
Prepaid water costs and other current assets	(1,772,742)		(1,772,742)
Accounts payable and accrued expenses	4,766,054		4,766,054
Water exchange payable and other water user deposits	(45,000)		(45,000)
Accrued payroll and related liabilities	37,635		37,635
Deferred revenue	5,599,474		5,599,474
Total adjustments	17,098,417	83,927	17,182,344
Net cash provided (used) by operating activities	<u>\$14,815,989</u>	<u>(\$24,363)</u>	<u>\$14,791,626</u>

See independent auditors' report and notes to financial statements.

**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
YEAR ENDED FEBRUARY 29, 2008**

**NOTE A – SIGNIFICANT ACCOUNTING POLICIES**

**Organization:** Westlands Water District (the District) was organized under California state law in 1952 as a California special district. The District administers delivery of water from the United States Bureau of Reclamation's (Reclamation) Central Valley Project to users (primarily consisting of users involved in the Central California agriculture industry) within the District's boundaries covering approximately 604,500 acres. The water is purchased from Reclamation and sold to users at prices designed to cover the cost of purchasing the water, plus the administrative, operating and maintenance expenses of the District.

Reclamation constructed a distribution and drainage system in the 1960s and 1970s to conduct water flow through the District's boundaries. This system provides water service to all but approximately 70,000 acres of District land. The District had two separate contracts, a 20-year and a 40-year contract with Reclamation to repay the construction costs. The obligation for the 20-year contract was completed in December 2000.

The law provides for the election of a governing Board of Directors (the Board) by District land owners, or their representatives, each voting according to the District's assessed value of the land owner's land within the District. The District is not subject to state or federal income taxes. The District accounts for its activities using the public utility accounting system.

The District complies with Generally Accepted Accounting Principles (GAAP). The District's reporting entity applies all relevant Governmental Accounting Standards Board (GASB) pronouncements. The District applies Financial Accounting Standards Board (FASB) pronouncements and Accounting Principles Board (APB) opinions issued on or before November 30, 1989, unless those pronouncements conflict with or contradict GASB, in which case, GASB prevails.

**Reporting Entity:** GASB Statement 14 establishes criteria for determining which organization should be included in a governmental reporting entity. The focal point for preparing financial statements of a financial reporting entity is the primary government. The identification of a financial reporting entity is built around the concept of financial accountability. That is, if a primary government is financially accountable for another entity, that entity's financial statements must be included in the financial statements of the reporting entity. Thus, the financial reporting entity consists of the primary government and its component units.

Primary government is defined as a state, general purpose local or special purpose local government that has a separately elected governing body, is legally separate, and is fiscally independent of other state or local governments.

Component units are defined as legally separate organization for which the elected officials of the primary government are financially accountable. In addition, a component unit can be another organization for which the nature and significance of its relationship with a primary government is such that the exclusion would cause the reporting entity's financial statements to be misleading or incomplete.

Based on these criteria and definitions, the District is the primary government and there are no potential component units, which should be included with the accompanying financial statements of the District.

**Method of Accounting:** The District's activities are accounted for as an enterprise fund and are financed and operated in a manner similar to that of a private business enterprise. The District uses the economic resources measurement focus. Under this method, revenues are recorded when earned and expenses are recorded at the time liabilities are incurred.

The District's funds distinguish revenues and expenses and nonoperating items. Operating revenues and expenses generally result from providing services in connection with the District's ongoing operations. The principal operating revenues of the District are water sales and land based charges. Operating expenses include water purchases and distribution costs, administrative expenses and depreciation and amortization on capital assets and water rights. All other revenues and expenses not meeting this definition are reported as nonoperating revenues and expenses.

The District's financial statements are presented in compliance with GASB Statement No. 34, *Basic Financial Statements and Management's Discussion and Analysis for State and Local Governments*, as amended by GASB Statement No. 37, *Basic Financial Statement and Management's Discussion and Analysis for State and Local Governments: Omnibus*, and GASB Statement No. 38, *Certain Financial Statement Disclosures*. These statements established a fundamentally new financial reporting model for all state and local governments including management's discussion and analysis of an entity's financial position and results of operations. GASB 34 also requires the classification of net assets into three components defined as follows:

**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
YEAR ENDED FEBRUARY 29, 2008  
(continued)**

- *Invested in Capital Assets, Net of Related Debt* – This component of net assets consists of capital assets, net of accumulated depreciation reduced by the outstanding debt balances used to put in place the capital assets.
- *Restricted* – This component consists of net assets with constraints placed on their use by donors, agencies or others outside the District.
- *Unrestricted* – This component consists of net assets that do not meet the definition of restricted or invested in capital assets, net of related debt.

Under GASB 34, the Statement of Cash Flows is required to be presented using the direct method of presentation. The statement is also required to present a reconciliation of operating cash flows to operating income (loss).

**Management's Discussion and Analysis:** GASB 34 requires that financial statements be accompanied by a narrative introduction and analytical overview of the District's financial activities in the form of a "Management's Discussion and Analysis" (MD&A). This analysis is similar to the analysis provided in the annual reports of organizations in the private sector.

**Use of Estimates:** The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amount of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**Budgetary Control:** Annual budgets are approved and adopted each year by the District's Board. The budget is used to estimate annual revenues and expenditures and is amended primarily upon Board committee or Board approval. Budgeting control is maintained at the department level.

**Cash and Cash Equivalents:** Cash and cash equivalents include investments in highly liquid debt instruments, when present, with an original maturity of three months or less or subject to withdrawal upon request. The District's investment pool utilizes investments authorized by the California Government Code and is further defined by the District's investment policy that is reviewed annually by the Board. Authorized investments include securities backed by the U.S. government; investment grade state or local instruments; insured or collateralized certificates of deposit; commercial paper; bankers acceptances; and medium-term notes. The District's financial statements are presented in compliance with *GASB Statement No. 40, Deposit and Investment Risk Disclosures*.

**Accounts Receivable:** The District's management believes that all accounts receivable from water users and others are fully collectible for year ended February 29, 2008. Accordingly, an allowance for doubtful accounts has not been recorded in these financial statements.

**Direct Financing Leases:** The District leases certain irrigation equipment to various water users under terms which are accounted for as "direct financing leases" as defined in *Statement of Financial Accounting Standard No. 13*. The difference between the gross rental to be received and the present value of the rentals is recorded as unearned financing income and is amortized into income over the term of the lease using the effective interest rate method. The present value of the rentals to be received under such leases is recorded in the District's financial statements.

**Operating Supplies:** Operating supplies consist of inventories used in the course of maintaining operations and are recorded on the basis of cost, determined by a weighted average which does not exceed market.

**Utility Plant:** Utility plant assets are recorded on the basis of cost. Depreciation is computed using the straight-line method over the estimated useful lives of the related assets, which range from 10 to 75 years for distribution, drainage and related facilities, 20 to 40 years for buildings and 2 to 25 years for other operating equipment. Expenditures for maintenance, repairs and renewals are charged to expenses as incurred, while expenditures for significant improvements are capitalized.

The District records and capitalizes the construction costs for irrigation water distribution and drainage collector facilities which have been constructed by Reclamation and to which title is retained by the United States. A liability for repayment is also recorded by the District. When the obligation is relieved, the District believes Congress will enact the passage of title to the District.

**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
YEAR ENDED FEBRUARY 29, 2008  
(continued)**

**Amortization:** Debt issuance costs are amortized using the straight-line method over the life of the related loan. Water rights purchased are amortized using the straight-line method over the remaining life of the District's water service contracts with Reclamation, or up to 34 years, based upon the expiration of the contracts on December 31, 2007, and their guaranteed renewal for a minimum of 25 years as provided by the Central Valley Project (CVP) Improvement Act.

**Assessments:** The District levies an assessment on all land owners within the District's boundaries each fiscal year. After the assessment roll is completed and the District has made the roll available for public review, the District then equalizes the assessment roll. Liens are then placed on the land and assessments become due and payable within six months from the date of the lien.

**Land Based Charges:** Certain costs associated with improving or enhancing the water supply within the District and improving the distribution system are passed along to District land owners in the form of land based charges. The payments are due in one or two installments depending on the type of charge and the location of the land within the District.

**Revenue Recognition:** Water sales are recorded when water is delivered to the user. Assessments are recorded when levied. Deferred revenues are recorded when prepayments or deposits are received on future water deliveries and are recognized as income when the water is delivered to the water user. Land based charges are generally recorded as deferred revenue when billed and recognized as revenue in the year the installments are due.

**Compensated Absences:** The District's policy allows employees to accumulate vacation leave, capped at 240 hours. Upon termination, employees will be paid their accrued vacation at the rate of pay upon separation.

The District's policy allows employees to accumulate an unlimited amount of medical leave. Upon separation from the District, an employee who is eligible for retirement with California Public Employees Retirement System (CalPERS) shall have the remaining unused medical leave converted to service credit on an hour for hour basis, up to a maximum of six months additional service credit, subject to the rules and regulations of CalPERS. Employees hired on or before March 31, 1996, and as of that date, have fifteen years of service or are eligible for retirement benefits with CalPERS, in lieu of converting unused sick leave to service credit, may elect to receive a fifty percent (50%) cash payout at the employee's rate of pay at the time of separation for the lesser of the employee's unused medical leave accrued before March 31, 1996, up to 520 hours or such lower balance of unused medical leave which may result from use prior to employee's separation.

**NOTE B – CASH AND INVESTMENTS**

Cash and investments are classified in the accompanying financial statements as follows:

	<u>2008</u>
Statement of net assets:	
Cash and investments	\$ 55,198,573
Restricted assets:	
Cash and investments	3,957,466
Cash and investments by bond trustee	<u>13,299,303</u>
Total cash and investments	<u>\$ 72,455,342</u>

Cash and investments as of February 29, 2008 consist of the following:

	<u>2008</u>
Cash on hand	\$ 177,775
Deposits with financial institutions	899,346
Investments	<u>71,378,221</u>
Total cash and investments	<u>\$ 72,455,342</u>

**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
YEAR ENDED FEBRUARY 29, 2008  
(continued)**

**Interest Rate Risk:** In accordance with its investment policy, the District manages its exposure to changes in market interest rates by diversifying its investment by security type and institution. In addition, the maximum authorized term of maturity shall be five years unless authorized by the Board of Directors; provided, the weighted average maturity of all investments shall be 36 months or less. The following table illustrates the distribution of the District's investments by maturity as of February 29, 2008:

	Fair Value	12 months or less	More than 12 months
External Investment Pools	\$58,078,918	\$58,078,918	
Held by Bond Trustee:			
US Treasury Money			
Market Funds	10,155,893	10,155,893	
External Investment Pools	3,143,410	3,143,410	
Total	<u>\$71,378,221</u>	<u>\$71,378,221</u>	

**Credit Risk:** The District limits its exposure to credit risk, that is, the risk that an issuer of an investment will not fulfill its obligation to the holder of the investment, by limiting its investments to instruments with the top ratings issued by a nationally recognized statistical rating organization. Presented below is the minimum rating required by (where applicable) the California Government Code, the District's investment policy, or debt agreements, and the actual rating as for each investment type as of February 29, 2008:

	Fair Value	Minimum Legal Rating	AA	Not Rated
External Investment Pools	\$58,078,918	N/A	\$16,818,900	\$41,260,018
Held by Bond Trustee:				
US Treasury Money				
Market Funds	10,155,893	N/A		10,155,893
External Investment Pools	3,143,410	N/A	2,297,228	846,182
Total	<u>\$71,378,221</u>		<u>\$19,116,128</u>	<u>\$52,262,093</u>

**Concentration of Credit Risk:** The District's investment policy provides for diversification of investments by security type and institution. There are no investments in any one issuer that represent 5% or more of total District investments.

**Custodial Credit Risk:** Custodial credit risk for deposits is the risk that, in the event of the failure of a depository financial institution, a government will not be able to recover its deposits or will not be able to recover collateral securities that are in the possession of an outside party. In accordance with the California Government Code, the District's financial institution secures deposits made by state and local governmental units by pledging securities in an undivided collateral pool held by a depository regulated under state law. The market value of the pledged securities must equal at least 110% of the total amount deposited by the public agencies. At February 29, 2008, none of the District's deposits in excess of federal depository insurance were held in uncollateralized accounts.

Custodial credit risk for investments is the risk that, in the event of the failure of the counterparty to a transaction, a government will not be able to recover the value of its investment or collateral securities that are in the possession of another party. As of February 29, 2008, none of the District's investments were subject to custodial credit risk.

**Investments in External Investment Pools:** The District is a voluntary participant in the following external investment pools: Local Agency Investment Fund (LAIF); Fresno County Treasury Investment Pool; California Asset Management Program (CAMP); and the Investment Trust of California (CalTrust). LAIF is regulated by the California Government Code under the oversight of the Treasurer of the State of California. The Fresno County Treasurer Investment Pool is regulated by the California Government Code under the oversight of the Auditor-Controller/Treasurer-Tax Collector of Fresno County. CAMP and CalTrust are administered under the oversight of a Board of Trustees, comprised of experienced investment managers. The fair value of the District's investments in these pools are reported in the accompanying financial statements at amounts based upon the District's pro-rata share of the fair value provided by the pools for their entire portfolio (in relation to the amortized cost of that portfolio).

**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
YEAR ENDED FEBRUARY 29, 2008  
(continued)**

**NOTE C – ACCOUNTS RECEIVABLE – WATER USERS AND OTHERS**

Accounts receivable from water users and others consisted of the following types at February 29, 2008:

Water users and others:

Water users from water sales, etc.	\$ 3,218,886
Land owners' assessments/Land based charges	9,239,497
United States Bureau of Reclamation	<u>3,769,512</u>
Total water users and others	16,227,895
Accrued interest receivable	312,859
Current portion of long-term notes and financing receivables	<u>4,455,486</u>
	<u>\$ 20,996,240</u>

**NOTE D – LONG-TERM NOTES AND FINANCING RECEIVABLES**

Long-term notes and financing receivables consisted of long-term notes with several water districts and investments in direct financing leases at February 29, 2008:

Direct financing leases:

Minimum lease payments to be received	\$ 7,211,537
Less unearned finance income	<u>(409,018)</u>
	6,802,519
Less current portion	<u>(2,935,717)</u>
	3,866,802
Distribution system improvement loan	328,736
Less current portion	<u>(119,769)</u>
	208,967
Long-term note with Santa Clara Valley Water District	2,778,608
Intertie promissory notes	<u>1,527,951</u>
	<u>\$ 8,382,328</u>

Minimum future rents receivable under non-cancelable direct financing leases are: \$2,935,717 in 2009; \$2,310,737 in 2010; \$1,531,460 in 2011; and \$433,623 in 2012. Net investment in direct financing leases secured installment notes payable at February 29, 2008 have a net carrying value totaling \$3,576,170.

The Distribution System Improvement Program is a low interest loan program to provide assistance to landowners in the construction of distribution facilities for under-served District lands. Funding comes from Irrigation Equipment Lease Repayments, if available. As of February 29, 2008, the long-term DSIP loan receivable balance was \$208,967.

As of February 29, 2008, the District had a note receivable from Santa Clara Valley Water District in the amount of \$2,778,608, payable over a period of 30 years at an amount equal to one-half the annual net debt service costs incurred by the District to finance the acquisition of the water rights from Mercy Springs Water District. Payments from Santa Clara are to be made two times per year on a date not less than 90 days prior to the date the District is obligated to pay the principal and interest on the debt.

In fiscal year 2005-2006, the District, along with several other water districts, individually entered into agreements with the United States to provide for financial participation in the Delta Mendota Canal-California Aqueduct Intertie Project (Intertie Project). A portion of the proceeds from the Revenue Certificates of Participation, Series 2005A (COPs 2005A) issued in February 2005 had been designated for this project. Six of the participating water districts requested that the District advance their portion of the contributed funds for the Intertie Project and, in turn, provided a Promissory note to repay the funds, plus a proportionate share of the issuance costs for the COPs 2005A, over a ten-year period at 5% per annum on the unpaid balance. At February 29, 2008, the outstanding balances of the Intertie Promissory Notes were \$1,527,951.



**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
YEAR ENDED FEBRUARY 29, 2008  
(continued)**

**NOTE E – UTILITY PLANT**

The District's utility plant consisted of the following at February 29, 2008:

**ASSETS AT COST**

	<u>2/28/07</u>	<u>Additions</u>	<u>Deletions</u>	<u>2/29/08</u>
Not Depreciated:				
Land	\$ 642,847	\$	\$	\$ 642,847
Construction in Progress	1,467,796	879,717	(874,603)	1,472,910
Total Assets, Not Depreciated	<u>2,110,643</u>	<u>879,717</u>	<u>(874,603)</u>	<u>2,115,757</u>
Assets, Being Depreciated:				
Land Improvements	17,561			17,561
Distribution	173,180,393	997,841		174,178,234
Drainage System	20,433,960			20,433,960
Buildings	4,857,873	84,447		4,942,320
Furniture & Fixtures/Information Systems	1,496,589	128,932	(1,788)	1,623,733
Communications Equipment	121,052			121,052
Survey Equipment & Small Tools	79,141			79,141
Autos/Trucks	1,392,817	108,772		1,501,589
Shop Equipment	410,686			410,686
Field Equipment	1,537,098	58,849		1,595,947
Water District Assets, Being Depreciated	<u>203,527,170</u>	<u>1,378,841</u>	<u>(1,788)</u>	<u>204,904,223</u>
Fishing Club Assets, Being Depreciated		2,140,009		2,140,009
Total Assets, Being Depreciated	<u>203,527,170</u>	<u>3,518,850</u>	<u>(1,788)</u>	<u>207,044,232</u>
<b><u>LESS ACCUMULATED DEPRECIATION</u></b>				
Land Improvements	\$ 16,560	\$ 830	\$	\$ 17,390
Distribution	64,894,397	2,498,398		67,392,795
Drainage System	6,025,776	272,453		6,298,229
Buildings	2,997,410	137,010		3,134,420
Furniture & Fixtures/Information Systems	1,230,035	93,204	(1,504)	1,321,735
Communications Equipment	115,660	3,435		119,095
Survey Equipment & Small Tools	78,253			78,253
Autos/Trucks	972,814	121,550		1,094,364
Shop Equipment	399,640	662		400,302
Field Equipment	958,491	76,941		1,035,432
Accumulated Depreciation, Water District	<u>77,689,036</u>	<u>3,204,483</u>	<u>(1,504)</u>	<u>80,892,015</u>
Accumulated Depreciation, Fishing Club		83,927		83,927
Total Accumulated Depreciation	<u>77,689,036</u>	<u>3,288,410</u>	<u>(1,504)</u>	<u>80,975,942</u>
Total Water District Assets, Net	127,948,777			126,127,965
Total Fishing Club Assets, Net				2,056,082
Total Utility Plant	<u>\$ 127,948,777</u>			<u>\$ 128,184,047</u>

**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
YEAR ENDED FEBRUARY 29, 2008  
(continued)**

**NOTE F – RESTRICTED ASSETS**

Restricted assets consisted of the following cash balances at February 29, 2008:

Drainage Trust Fund	\$67,900
Section 125 Trust Account	3,659
State of California ISIP and EISIP	1,088,078
Land and Water Acquisition	2,797,829
Bond Indenture Agreements – Tracy	407,595
Bond Indenture Agreements– Series 1999A	1,654,286
Bond Indenture Agreements– Series 2002A	3,328,653
Bond Indenture Agreements– Series 2005A	1,864,986
Bond Indenture Agreements– Series 2005B	2,664,761
Bond Indenture Agreements– Series 2007A	3,128,974
Bond Indenture Agreements– Series 2007B	250,048
	<u>\$17,256,769</u>

**Drainage Trust Fund:** In accordance with a 1986 water rate dispute settlement (the Barcellos Judgment), the District was required to establish and maintain a "Drainage Trust Fund" to aid in funding future costs of drainage service facilities. The settlement required the District to fund the Drainage Trust Fund at a rate of \$5,000,000 per year (to be collected from land owners), including interest up to \$100 million. The District received a court order on May 29, 1992 that the monies deposited, including interest, be released and refunded to the land owners. Of the total collected, there is a remaining unrefunded balance of \$67,900 in the Drainage Trust Fund, which has been classified as a restricted asset, and a corresponding liability has been included in the District's financial statements. The District is attempting to resolve disputed refund claims submitted for these monies.

**State of California - ISIP and EISIP:** During the fiscal year ended February, 1996, the District was awarded \$1 million from the State of California Revolving Loan Program (ISIP) to purchase and install irrigation systems to be leased by certain water users. These leases are accounted for as direct financing leases and are payable over four years. The District's corresponding liability to the State of California is due and payable over 20 years.

During the fiscal year ended February, 1999, the District was awarded \$5 million from the State under an extended loan program (EISIP) to purchase and install irrigation systems to be leased by certain water users. These leases are accounted for as direct financing leases and are also payable over 4 years. The District's corresponding liability to the State is due and payable over 20 years.

As of February 29, 2008, the District had \$1,088,078 available for future leases and to make the District's scheduled payments on the above programs to the State.

**Land and Water Rights Acquisition:** In February 2005, the District issued \$58,195,000 Series 2005A Revenue Certificates of Participation for the purpose of acquiring land in the Broadview Water District and a portion of Oro Loma Water District's Central Valley Project water entitlement, continuing the land and water entitlement acquisition program within the District, and paying the District's share of the U.S. Bureau of Reclamation's cost of constructing the intertie facility between the California Aqueduct and the Delta-Mendota Canal. As of February 29, 2008, \$2,703,981 remained for future acquisitions and projects.

In January 2007, the District issued \$36,815,000 Series 2007A Revenue Certificates of Participation for the purpose of acquiring land and water rights associated with property in Shasta County, California. The property was acquired to prevent its development, which would be an additional impediment to Reclamation's potential project for raising Shasta Dam. As of February 29, 2008, \$91,427 remained for additional expenses associated with the purchase.

In December 2007, the District issued \$20,945,000 Series 2007B Revenue Certificates of Participation for the purpose of acquiring property located in Yolo County, California. The property was acquired to pursue development of habitat for the Delta smelt, an endangered species of fish, and/or other water supply-related, environmental mitigation purposes. As of February 29, 2008, \$2,421 remained for additional expenses associated with the purchase.

**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
YEAR ENDED FEBRUARY 29, 2008  
(continued)**

**Bond Indenture Agreements - Series 1999A:** In accordance with the agreements for the offering of \$33,660,000 Series 1999A Revenue Certificates of Participation, the District was required to establish and maintain a "Bond Reserve Fund." The initial deposit required of the District was \$2,199,154. On specified dates, if the monies in the "Certificate Payment Fund" are insufficient to make the payments required, the Trustee shall transfer from the Bond Reserve Fund to the Certificate Payment Fund the amount of such insufficiency. In September 2005, a portion of the 1999A certificates was refunded and the reserve requirement was adjusted to \$846,181. As of February 29, 2008, the Bond Reserve Fund balance is \$869,195. As of February 29, 2008, the District had \$785,091 in the Certificate Payment Fund for the payment due March 1.

**Bond Indenture Agreements - Series 2002A:** In accordance with the offering of \$100,000,000 Series 2002A Revenue Certificates of Participation, the District was required to establish a Bond Reserve Fund in an amount equal to the maximum Series 2002A installment payments due in the then current or any future fiscal year. A Surety Bond held by the Trustee in the Reserve Fund has been provided as an alternative to the District depositing funds. The face amount of the Surety Bond is equal to the Reserve requirement and the premium was fully paid at the time of delivery of the 2002A Certificates. As of February 29, 2008, the District had \$3,328,653 in the Certificate Payment Fund for the payment due March 1.

**Bond Indenture Agreements - Series 2005A:** In accordance with the offering of \$58,195,000 Series 2005A Revenue Certificates of Participation, the District was required to establish a Bond Reserve Fund in an amount equal to the maximum Series 2005A installment payments due in the then current or any future fiscal year. A Surety Bond held by the Trustee in the Reserve Fund has been provided as an alternative to the District depositing funds. The face amount of the Surety Bond is equal to the Reserve requirement and the premium was fully paid at the time of delivery of the 2005A Certificates. As of February 29, 2008, the District had \$1,864,986 in the Certificate Payment Fund for the payment due March 1.

**Bond Indenture Agreements - Series 2005B:** In fiscal year 2005-2006, \$30,300,000 Series 2005B Adjustable Rate Revenue Certificates of Participation were issued to refund a portion of the outstanding Series 1999A Revenue Certificates of Participation. In accordance with the agreements for the offering, the District was required to establish a Bond Reserve Fund in an amount equal to the maximum Series 2005B installment payments due in the then current or any future fiscal year. The initial deposit into this account was \$1,966,394. As of February 29, 2008, the District had \$2,005,273 in the Reserve Fund. As of February 29, 2008, the District had \$659,488, in the Certificate Payment Fund for the payment due March 1.

**Bond Indenture Agreements - Series 2007A:** In accordance with the offering of \$36,815,000 Series 2007A Revenue Certificates of Participation, the District was required to establish a Bond Reserve Fund in an amount equal to the maximum Series 2007A payments due in the then current or any future fiscal year. As of February 29, 2008, the Reserve Fund balance was \$2,297,228. The balance in the Certificate Payment fund was \$831,746 for the payment due March 1.

**Bond Indenture Agreements - Series 2007B:** In accordance with the offering of \$20,945,000 Series 2007B Revenue Certificates of Participation, the District was required to establish a Bond Reserve Fund in an amount equal to the maximum Series 2007A payments due in the then current or any future fiscal year. A Surety Bond held by the trustee has been provided as an alternative to the District depositing the funds. The face amount of the Surety Bond is equal to the Reserve requirement and the premium was fully paid at the time of delivery of the 2007B Certificates. As of February 29, 2008, the District has \$3,296 in the Certificate Payment Fund and \$231,268 in the Interest Fund for the payment due March 1. In addition, \$15,484 remained in the Delivery Cost Fund held by the trustee.

**NOTE G - WATER RIGHTS AND DEBT ISSUE COSTS**

Water rights purchased and debt issue costs consisted of the following at February 29, 2008:

Water rights:	
Value of water rights at estimated cost	\$120,161,338
Less accumulated amortization	(17,614,275)
	<u>\$102,547,063</u>
Debt issue costs:	
Value of debt issue at incurred cost	\$3,400,291
Less accumulated amortization	(821,896)
	<u>\$2,578,395</u>

**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
YEAR ENDED FEBRUARY 29, 2008  
(continued)**

Amortization expense for the year ended February 29, 2008 was \$4,241,925.

**NOTE H – REAL PROPERTY HELD**

Real property held consisted of the following at February 29, 2008:

Land held under land and water acquisition programs	\$51,921,014
Land held for possible resale	597,734
McCloud River property	32,889,157
Yolo Ranch property	20,253,531
	<u>\$105,661,436</u>

In fiscal year 2006-2007, the District acquired approximately 3,000 acres of property located in Shasta County, California, along the McCloud River. The property was acquired to facilitate the raising of Shasta Dam by the United States Department of the Interior. Until that time, or for a period of 25 years from the closing date, the District has agreed to maintain the property as a private fishing club. A separate enterprise fund has been established to report the financial transactions of the fishing club.

In fiscal year 2007-2008, the District acquired approximately 3,400 acres of property located in Yolo County, California. The property was acquired to pursue projects to address water supply-related environmental and/or Endangered Species Act issues.

**NOTE I – DEBT BORROWINGS**

Debt borrowings consisted of the following at February 29, 2008:

U.S. Bureau of Reclamation distribution and drainage collector system construction contracts; payable in semiannual installments on January 1 and July 1 of \$1,991,357 through 2018; non-interest bearing, collateralized by distribution and drainage collector systems.	\$41,896,551
1990 San Luis and Delta-Mendota Water Authority Revenue Bonds; payable to Trustee in annual installments of approximately \$410,000 through October 2008, including interest at a rate of 6.75%.	381,822
1990 Proposition 44 Loan; payable to State of California in annual installments of \$76,824 to August 2010; including interest at 3.6%, unsecured.	211,473
Irrigation System Improvement Program; payable to State of California in annual installments of \$65,844 through 2016, including interest at 2.8%; collateralized by lease payments on the equipment.	517,486
Extended Irrigation System Improvement Program; payable to State of California in annual installments of \$324,830 through 2019, including interest at 2.6%; collateralized by lease payments on the equipment.	3,058,684
Series 1999A Revenue Certificates of Participation; payable to Trustee in annual installments beginning at \$595,000 in March 2001 and increasing in amounts ranging from \$25,000 to \$30,000 annually through March 2009, plus interest at rates ranging from 3.5% to 4.25%; collateralized by revenues of the District.	1,580,000
Series 2002A Revenue Certificates of Participation; payable to Trustee in annual installments beginning at \$1,650,000 in September 2005 and increasing in amounts ranging from \$50,000 to \$295,000 annually through September 2034, plus interest at rates ranging from 3.0% to 5.25%; collateralized by revenues of the District.	94,885,000

**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
YEAR ENDED FEBRUARY 29, 2008  
(continued)**

Series 2005A Revenue Certificates of Participation; payable to Trustee in annual installments beginning at \$980,000 in September 2005 and increasing in amounts ranging from \$25,000 to \$100,000 annually through September 2035, plus interest at rates ranging from 2.5% to 5.0%; collateralized by revenues of the District. 55,250,000

Series 2005B Revenue Certificates of Participation; payable to Trustee in annual installments beginning at \$100,000 in March 2006 and increasing in amounts ranging from \$105,000 to \$855,000 annually through March 2029; plus interest at variable rates; collateralized by revenues of the District. 29,995,000

Series 2007A Revenue Certificates of Participation; payable to Trustee in annual installments beginning at \$635,000 in September 2008 and increasing in amounts ranging from \$25,000 to \$110,000 annually through September 2037; plus interest at rates ranging from 3.5% to 5.0%; collateralized by revenues of the District. 36,815,000

Series 2007B Revenue Certificates of Participation; payable to Trustee in annual installments beginning at \$350,000 in September 2008 and increasing in amounts ranging from \$15,000 to \$60,000 annually through September 2037; plus interest at rates ranging from 3.5% to 5.0%; collateralized by revenues of the District. 20,945,000

285,536,016

Deferred amounts:  
Bond premiums and discounts 4,402,868  
Deferred loss of refunding (2,228,956)

Less current maturities (9,558,909)

\$278,151,019

Debt service requirements to maturity are as follows:

Year ending the last day of February	Principal	Interest
2009	\$9,558,909	\$10,967,025
2010	10,197,316	10,750,760
2011	9,554,153	10,521,229
2012	9,671,785	10,322,930
2013	9,880,216	10,114,051
2014-2018	52,999,126	46,801,514
2019-2023	41,489,511	38,820,576
2024-2028	48,975,000	28,876,004
2029-2033	55,190,000	16,371,043
2034-2038	38,020,000	3,449,500
Total	<u>\$285,536,016</u>	<u>\$186,994,632</u>

In fiscal year 2005-2006, the District issued \$30,300,000 Adjustable Rate Revenue Certificates of Participation, Series 2005B, to advance refund a portion (\$27,400,000) of the outstanding Revenue Certificates of Participation, Series 1999A. The portion of the proceeds used for the advance refunding has been placed in an escrow account. The refunded bonds are considered defeased and the liability has been removed from the Statement of Net Assets. The reacquisition price exceeded the net carrying value of the former debt by \$2,441,237, and such amount will be amortized through March 2029 over the life of the new debt which is the same as the old debt. This transaction will reduce future debt service payments by \$5,348,278 and results in an economic gain of \$2,804,967.

**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
YEAR ENDED FEBRUARY 29, 2008  
(continued)**

**Changes in long-term liabilities**

Long-term liability activity for the year ended February 29, 2008, was as follows:

	<u>Beginning Balance</u>	<u>Additions</u>	<u>Reductions</u>	<u>Ending Balance</u>	<u>Due Within One Year</u>
Bonds payable:					
Revenue bonds	\$222,985,462	\$20,945,000	\$(4,078,640)	\$239,851,822	\$5,211,822
Plus deferred premium	4,606,533		(161,817)	4,444,716	
Less deferred discount		(41,849)		(41,849)	
Less deferred refunding loss	(2,335,096)		106,141	(2,228,955)	
Total bonds payable	225,256,899	20,903,151	(4,134,316)	242,025,734	5,211,822
Repayment contract	45,879,265		(3,982,714)	41,896,551	3,982,714
Loans payable	4,141,995		(354,352)	3,787,643	364,373
Payable from restricted assets	8,032,143	8,401,543	(8,742,002)	7,691,684	
Water exchanges	765,000		(45,000)	720,000	
Total long-term liabilities	<u>\$284,075,302</u>	<u>\$29,304,694</u>	<u>(\$17,258,384)</u>	<u>\$296,121,612</u>	<u>\$9,558,909</u>

**NOTE J – WATER EXCHANGE PAYABLE**

Water exchange payable consisted of the following at February 29, 2008:

KCWA 1995-1996 exchange	\$720,000
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The 1995-1996 Kern County Water Agency (KCWA) liability at February 29, 2008, represents 24,000 acre-feet of water to be acquired and provided to certain Priority II water users as a result of an exchange transaction. The amount is included in the District's financial statements as both a non-current asset and liability.

**NOTE K – DESIGNATED ASSETS**

Certain funds have been set aside by the District for future use for specific purposes. These amounts are included in unrestricted net assets. As of February 29, 2008, designated assets consisted of the following cash balances:

General Reserve	\$4,611,295
Retiree Health Reserve	919,271
Self Insurance/Unemployment Reserves	50,269
COP Reserve	4,398,300
O&M Reserve	8,129,665
Irrigation Equipment Lease Programs	2,974,651
Naval Air Station – Lemoore Reserve	719,824
2005A Naval Air Station – Lemoore Reserve	1,397,610
1965 Contract Repayment	2,586,590
	<u>\$25,787,475</u>

**General Reserve:** The general reserve was established to help the District meet unexpected obligations. As of February 29, 2008, the District had designated funds of \$4,611,295 in this reserve.

**Retiree Health Reserve:** The District established a reserve to pay for retiree health benefits. As of February 29, 2008, \$919,271 was available for these expenses. Additional information regarding this reserve may be found in Note M.

**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
YEAR ENDED FEBRUARY 29, 2008  
(continued)**

**Self Insurance/Unemployment Reserves:** The District established a self-insurance reserve for vehicle collision and comprehensive expenses as they occur. In addition, funds are included for unemployment insurance expenses. As of February 29, 2008, \$50,269 was held in this reserve.

**COP Reserve:** The District has collected through a land-based charge to fund long-term water acquisitions, an amount to be held in reserve to assist the District in meeting the debt service requirements in the event of drought. As of February 29, 2008, the amount held in this reserve was \$4,398,300.

**O&M Reserve:** Through water rates, the District collects an amount to be set aside to fund current and future operations and maintenance activities. Funds are collected for distribution system maintenance, vehicle purchases, facility maintenance and replacement, and information systems. As of February 29, 2008, the District had \$8,129,665 available in the O&M reserve.

**Irrigation Equipment Lease Programs:** In addition to the State of California Revolving Loan Program funds to purchase and install irrigation systems to be leased by certain water users classified as a restricted asset, the District has designated additional funds to supplement the program. As of February 29, 2008, the District had \$2,974,651 available for future leases.

**Naval Air Station - Lemoore Reserve:** On May 19, 2003, the District and the Naval Air Station - Lemoore (NASL) executed the "Supplemental Water Allocation Agreement" in order to provide for an increase in water supply. Pursuant to the agreement, a surcharge is imposed on agricultural water allocated to land within NASL boundaries and funds from this surcharge are deposited into this reserve account. This reserve account is to be maintained by the District for the benefit of NASL and used pursuant to the terms of the agreement. As of February 29, 2008, the balance of the reserve account was \$719,824.

**2005A Naval Air Station - Lemoore Reserve:** Pursuant to the "Supplemental Water Allocation Agreement" between the District and NASL, funds are transferred from the NASL Reserve and held in this reserve until needed for payment of the Navy's portion of the District's debt service obligations associated with the agreement. As of February 29, 2008, a balance of \$1,397,610 was held in this reserve.

**1965 Contract Repayment:** Pursuant to the Peck Settlement Agreements, the United States pre-paid the District for the remaining portion of the 1965 Contract Repayment obligation associated with the acquired lands. Funds are classified as a designated asset and applied to the contract repayment in installments through 2018. The balance at February 29, 2008, was \$2,586,590.

**NOTE L – RETIREMENT PLAN**

**Plan Description:** The District's defined benefit pension plan, the Miscellaneous Plan of the Westlands Water District Employer #497 (the Plan), provides retirement and disability benefits, annual cost-of-living adjustments, and death benefits to Plan members and beneficiaries. The Plan is part of the Public Agency portion of the California Public Employees Retirement System (CalPERS), which acts as a common investment and administrative agent for participating public employers within the State of California. A menu of benefit provisions as well as other requirements is established by State statutes within the Public Employees' Retirement Law. The District selects optional benefit provisions from the benefit menu by contract with CalPERS and adopts those benefits through local ordinance (other local methods). CalPERS issues a separate comprehensive annual financial report. Copies of the CalPERS' annual financial report may be obtained from the CalPERS Executive Office - 400 P Street - Sacramento, CA 95814.

**Funding Policy:** Active members in the Plan are required to contribute 7.0% of their annual covered salary. Beginning March 1, 2001, the District elected to provide the contribution for its employees using excess plan assets. The District is required to contribute the actuarially determined remaining amounts necessary to fund the benefits for its members. The actuarial methods and assumptions used are those adopted by the CalPERS Board of Administration. The required employer contribution rate for the 2007-2008 fiscal year was 0%. The contribution requirements of the Plan members are established by State statute and the employer contribution rate is established and may be amended by CalPERS.

**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
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**Annual Pension Cost:** For the 2007-2008 fiscal year, the District's annual pension cost was \$0 and the employer actually contributed \$0. The annual required contribution (ARC) for the 2007-2008 fiscal year was determined as part of the June 30, 2006, actuarial valuation using the entry age normal actuarial cost method with the contributions determined as a percent of pay.

Because the District had less than 100 active members in at least one valuation since June 30, 2003, it is required to participate in the Miscellaneous 2% at 55 Risk Pool. The District's employer contribution rate is calculated using a combination of the District's individual cost plan components and the risk pool's cost components.

A summary of principal assumptions and methods used to determine the contractually required contributions for the cost sharing multiple employer benefit plan is shown below:

Valuation date	June 30, 2006
Actuarial cost method	Entry age actuarial cost method
Amortization method	Level percent of payroll
Average remaining period	16 years as of valuation date
Asset valuation method	15 year smooth market
Actuarial assumption	
Investment rate of return	7.75% (net of administrative expenses
Projected salary increases	3.25% to 14.45% depending on age, service, and type of employment
Inflation	3.00%
Payroll growth	3.25%
Individual salary growth	A merit scale varying by duration of employment coupled with an assumed annual inflation growth of 3.00% and an annual production growth of 0.25%

**Three-Year Trend Information for the District:**

<u>Fiscal Year Ending</u>	<u>Annual Pension Cost (APC)</u>	<u>Percentage of APC Contributed</u>	<u>Net Pension Obligation</u>
06/30/04		0.0%	
06/30/05		0.0%	
06/30/06		0.0%	

**Funded Status of the Risk Pool (in thousands):**

<u>Valuation Date</u>	<u>Accrued Liabilities (AL)</u>	<u>Actuarial Value of Assets(AVA)</u>	<u>Unfunded Liability (UL)</u>	<u>Funded Ratio (AVA/AL)</u>	<u>Annual Covered Payroll</u>	<u>UL as a % of Payroll</u>
06/30/04	\$2,746,095	\$2,460,945	\$285,151	89.6%	\$743,691	38.3%
06/30/05	\$2,891,461	\$2,588,713	\$302,748	89.5%	\$755,047	40.1%
06/30/06	\$2,754,397	\$2,492,226	\$262,170	90.5%	\$699,898	37.5%

**NOTE M – POST-RETIREMENT HEALTH CARE BENEFITS**

In addition to providing pension benefits, the District currently provides certain health care benefits for retired employees. Substantially all of the District's employees may become eligible for those benefits if they reach normal retirement age while working for the District.



**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
YEAR ENDED FEBRUARY 29, 2008  
(continued)**

Designated net assets, for post-retirement health care benefits, as of February 29, 2008, were \$919,271. Actual expenses of \$270,909 for fiscal year 2007-2008 were recognized for post-retirement health care benefits. Contributions to the fund consisted of interest earned of \$49,410. As of February 29, 2008, there were 57 retirees and 102 active plan participants.

In June 2004, the GASB issued SGAS No. 45, *Accounting and Financial Reporting by Employers for Postemployment Benefits other than Pensions (OPEB)*, which establishes standards of accounting and financial reporting for OPEB expenses and related OPEB liabilities or assets. OPEB arises from an exchange of salaries and benefits for employee services rendered. This Statement is effective for the District in fiscal year 2008-2009.

**NOTE N – DEFERRED COMPENSATION PLAN**

The District offers its employees a deferred compensation plan (the Plan), created in accordance with Internal Revenue Code Section 457. The Plan, available to all District employees, permits participants to defer a portion of their salary until future years. The deferred compensation is not available to participants until termination, retirement, death, or unforeseeable emergency.

All compensation deferred under the Plan, all property and rights purchased with those amounts, and all income attributable to those amounts, property, or rights are solely the property and rights of the participants. Participants' rights under the Plan are equal to the fair market value of the deferred account for each participant.

**NOTE O – LAND AND WATER RIGHTS ACQUISITION**

Since 1992, the long-term reliability of the District's Central Valley Project (CVP) water supply (Contract Water) has been significantly reduced as a result of a variety of changes in federal law. In an effort to increase the amount of water available for delivery to land owners and water users, the District's Board of Directors authorized a Land and Water Acquisition Program, in 1998. According to its guidelines, the CVP Contract Water entitlement acquired, or associated with the land to be acquired, would be reallocated and transferred to the landowners and water users within the District. Likewise, other water supplies acquired would be similarly allocated. Under this program, the District acquired 11,741 acres of land and approximately 37,181 acre-feet of water rights at a total cost of \$21,609,923.

On May 14, 1999, the District entered into an agreement with Mercy Springs Water District, Santa Clara Valley Water District and the Pajaro Valley Water Management Agency for the partial assignment of Mercy Springs Water District's existing Central Valley Project Water Contract. Under this agreement, Mercy Springs Water District assigned its right, title and interest in 6,260 annual acre-feet of Project water to the District, Santa Clara Valley Water District (Santa Clara) and Pajaro Valley Water Management Agency (Pajaro). The total cost was \$5,663,134. Under this agreement, Santa Clara has the first priority to the water, but may not receive more than 25% of the actual deliveries in each ten-year period. Additionally, Pajaro may exercise an option to obtain the District's share of the assignment during the eleventh through the twentieth year.

In August 1998, the District entered into a Land Retirement Agreement with the United States Department of the Interior, to cooperate on a project for the retirement of up to 15,000 acres of land within the District over a period of three years. During the term of the agreement, a total of 1,433 acres of land was acquired by the United States, with the District contributing up to the \$1,150 per acre towards the purchase price in order to retain the right to receive the District's CVP Contract Water associated with the lands. The District acquired approximately 3,838 acre-feet of water rights under this agreement at a total cost of \$1,677,092.

On April 29, 2002, the District's Board of Directors approved the Agreement for Distribution of Water, Allocation of Costs, and Settlement of Claims (Sagoupe Settlement Agreement), reached between the Area I and Area II landowners that were parties to the litigation, and the courts validated this agreement on December 3, 2002. The lands and associated water rights acquired by the District and/or the United States through the Land and Water Acquisition Program, the Land Retirement Agreement and the Peck Settlement Agreements, and repayment of the debt obligation for these lands and associated water rights, were incorporated into and are now governed by the Sagoupe Settlement Agreement. Through this agreement, the District expended \$108.5 million (\$8.5 million of District reserves and \$100

**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
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million obtained through the issuance of new debt) to acquire sufficient land within the District, the permanent right to an allocation of the District's CVP Contract Water that is apportioned among lands in the District, or a long-term water supply other than the District's CVP Contract Water, in order to make an equal water supply allocation of 2.60 acre-feet per acre to eligible Area I and Area II lands that are not retired lands (i.e., lands acquired within the District, or lands for which the permanent right to an allocation of the District's CVP Contract Water has been acquired) in any water year that the District's Contract Water supply is not less than 1,150,000 acre-feet. Pursuant to this agreement, prior to March 1, 2008, the allocation of water supply was equalized by allocating to Area II lands that are not retired lands the District Contract Water and other water supplies obtained through the acquisitions contemplated by the agreement. On and after March 1, 2008, District Contract Water and other supplies from this agreement will be allocated equally on a per-acre basis to eligible Area I and Area II lands that are not retired lands. Repayment of debt issued by the District which implements this settlement agreement is being accomplished by the collection of land-based charges imposed on irrigable lands in Areas I and II that are not retired lands according to a formula specified in the agreement. As of February 29, 2008, the District had acquired 28,360 acres of land and approximately 84,922 acre-feet of water rights at a cost of \$49,277,269 to complement the Land and Water Acquisition Program, the Land Retirement Agreement and the Peck Settlement Agreement acquisitions.

In September and December 2002, the District, the United States and owners of approximately 36,000 acres of farmland in the Westlands Water District reached a settlement in a long-standing lawsuit involving drainage issues (Peck Settlement Agreements). Under the agreements, the District purchased approximately 35,000 acres of land over a three-year period and permanently removed the land from irrigated agriculture. The cost of the settlements to the District was approximately \$35 million and was funded by the debt issuance from the Sagoupe Settlement Agreement. Likewise, the water formerly allocated to the lands that were acquired is now distributed to other farmers within the District pursuant to the Sagoupe agreement. As of February 29, 2008, approximately 29,487 acres of land and 90,597 acre-feet of water rights had been acquired at a cost of \$31,921,273.

In February and March 2005, the District acquired approximately 8,750 acres of land within the Broadview Water District, which is substantially all of Broadview's irrigable acreage. With the acquisition, the District initiated and completed the processes to annex all of Broadview's lands and receive a permanent assignment of Broadview's Central Valley Project Water Contract totaling 27,000 acre-feet to the District from Reclamation. From this water supply, the District annually makes available 6,000 acre-feet of entitlement to the Naval Air Station – Lemoore pursuant to the Supplemental Water Allocation Agreement between the District and NASL. The remaining 21,000 acre-feet of entitlement is annually allocated according to the Sagoupe Settlement Agreement.

In February 2005, the District acquired 4,000 acre-feet of water supply entitlement associated with Oro Loma Water District's Central Valley Project Water Contract. The District will seek a permanent assignment of this portion of Oro Loma's water contract to the District from Reclamation, and plans to annually make available the 4,000 acre-feet of entitlement to NASL pursuant to the aforementioned agreement.

Through these several initiatives and agreements, the District has acquired approximately 266,081 acre-feet of water rights at a total cost of \$101,342,194. The value of these water rights have been capitalized and are being amortized over the life of the District's water service contracts with the Bureau, or up to 34 years, based upon the expiration of the contracts on December 31, 2007, and their guaranteed renewal for a minimum of 25 years as provided by the CVP Improvement Act.

In fiscal year 2003-2004, the Board also authorized the acquisition of permanent, long-term water supplies for M&I use within the District, thereby making the District's CVP Contract Water supply previously used for these purposes available for agricultural use. In October, 2003, the District executed an agreement with the County of Kings and acquired 5,000 acre-feet of State Water Project water entitlement from Angiola Water District in order to make this water available to the Naval Air Station - Lemoore, pursuant to the Supplemental Water Allocation Agreement between the District and NASL. In May 2004, the District executed an agreement with Widren Water District and acquired all 2,990 acre-feet of Widren's Central Valley Project Water Contract. In October 2004, the District executed an agreement with Centinella Water District and acquired all 2,500 acre-feet of Centinella's Central Valley Project Water Contract.

**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
YEAR ENDED FEBRUARY 29, 2008  
(continued)**

**NOTE P – CENTRAL VALLEY PROJECT CAPITAL COST SHIFT**

The 1963 water service contract and the 1986 Barcellos Judgment result in the District receiving its water supply at amounts which, in certain instances, do not cover the full operation and maintenance (O&M) costs of Reclamation. Federal legislation enacted in 1986 directed Reclamation to determine each water contractor's share of main projects O&M costs (occurring after October 1, 1985) which are not currently reimbursed to Reclamation under existing water contracts. Reclamation was further directed to accumulate these excess costs; including interest (collectively O&M deficits) until such time that the new water contracts are renewed. Beginning in fiscal year 2008-2009, under the new interim contract, the District will be required to reimburse Reclamation for such O&M deficits through increased costs of its water supply. As of September 30, 2006, according to Reclamation calculations, there was no O&M deficit.

In addition, CVP main project capital allocated to the District must be paid in full by the year 2030. This capital is allocated to the federal water contractor on the basis of future projected water deliveries and is included in Reclamation's cost-of-service water rate. As of September 30, 2006, \$372,827,486 in unpaid CVP capital was reflected on Reclamation's accounting records as the District's future capital obligations. This amount has not been accrued as an obligation on the District's financial statements.

Prior to January 1, 2008, a substantial portion of the District's water users paid the published Reclamation Contract or O&M rate for CVP water. When the Contract and/or O&M rate is not sufficient to cover Reclamation's full O&M costs, and when combined with Reclamation's rate-setting and accounting methodology, a "deficit cost-shift" occurs within the District. When a deficit occurs, all or a portion of the capital payments are shifted to cover O&M shortages. As a result, those water users contributing to capital repayment may not be receiving credit for those payments. Consequently, the District undertook an accounting project to determine individual water users' contributions towards CVP O&M and capital repayment. Towards the end of the 1997-98 fiscal year, the Board evaluated the cumulative effect of this shift and adopted an internal rate setting policy to compensate for a portion of the shift and to pay O&M deficits, beginning March 1, 1998. As noted previously, the District and Reclamation executed an interim water service contract that became effective January 1, 2008. Pursuant to this contract, all District water users are obligated to pay Reclamation's published Cost-of-Service or Full-cost water rates (which include a capital component. As a result, the "deficit cost-shift" issue is now substantially eliminated.

During the year ended February 29, 2008, \$668,541 had been billed to water users and is included in the District's operating revenues.

**NOTE Q - CONTINGENCIES AND COMMITMENTS**

**Drainage Water System:** The Firebaugh Canal Water District (Firebaugh) and the Central California Irrigation District (CCID) amended complaint seeks damages from the District, other water districts within the San Luis Unit, and the United States. In addition to damages, the plaintiffs seek injunctive relief requiring the District, other districts within the San Luis Unit, and the United States to undertake measures to eliminate or mitigate for drainage problems on lands in Firebaugh's and CCID's service areas, and related water quality problems in the San Joaquin River. They allege that lands within their districts have been damaged by irrigation of "upslope" lands within the San Luis Unit, on a theory that water migrates to their lands and worsens drainage problems on their lands. The District vigorously disputes these claims.

The United States District Court for the Eastern District of California has ruled that the United States is obligated under Section 1 (a) of the San Luis Unit Act to provide drainage service to lands within the San Luis Unit. Firebaugh and CCID are not within the San Luis Unit. Firebaugh and CCID, however, allege that irrigation of lands in the San Luis Unit has created a "continuing nuisance" on their lands.

The damages claims against the District have been dismissed. On May 12, 2004, the district court dismissed the nuisance claims against the District with prejudice. A claim against the United States under the Administrative Procedure Act is still pending, and plaintiffs contend that the District is a necessary party to that claim. Any remedy for that claim would be limited to declaratory and injunctive relief, and not damages.

**WESTLANDS WATER DISTRICT  
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YEAR ENDED FEBRUARY 29, 2008  
(continued)**

The ultimate outcome of these matters, and any insurance coverage, together with the amount of the District's potential liability, if any, resulting from the ultimate resolution of these matters cannot presently be determined. Accordingly, no provision for any liability that may result has been made in the financial statements.

The District has assets of approximately \$14,135,732 as of February 29, 2008 (net book value) pertaining to the existing, but closed drainage collector system. The drainage system has not been used in the District's operations since 1986 and is not scheduled to be reopened until an alternative drainage plan can be developed. The ultimate recovery of the cost of the drainage system and, perhaps, the distribution system which services this farmland is contingent upon the development of alternative drainage plans. Management believes that alternative drainage plans to manage and/or otherwise collect, treat, and dispose of subsurface drainage water will be developed and, accordingly, no provision for any loss which might result from the failure to develop such a plan has been made in the financial statements.

Although the United States has been ordered by the District Court to provide a plan for drainage service, the District remains actively involved in its efforts to identify a solution to the drainage problem. Projects evaluated have included a selenium removal treatment plant, and a deep well injection program, both of which have been terminated due to technical problems and higher than anticipated costs. The District has also conducted other preliminary investigations into drainage reduction programs, cogeneration, agro forestry, and shallow groundwater pumping as potential solutions to the drainage problem. The ultimate cost of a solution remains unknown; however, management has concluded that the District has adequate financing capability to cover these costs in the future as they arise.

**Water Supply:** The District's contracts with Reclamation entitles it to receive up to 1,191,383 acre-feet of water per fiscal year. The District received 50% of its entitlement in the 2007-2008 fiscal year. Reclamation announced a 45% allocation for the 2008-2009 fiscal year and subsequently reduced it to 40%.

Various regulatory and legal proceedings may impact the guaranties of water available to the District in the future. However, management does not believe that these impacts will have a material adverse affect of the District's financial position, and any future impact would be nearly impossible to estimate at this point in time. Accordingly, no liability has been accrued in these financial statements.

**San Luis and Delta-Mendota Water Users Authority:** During the year ended February 28, 1991, the District entered into a Joint Powers Authority (the Authority) with several other water districts and issued the San Luis and Delta-Mendota Water Authority Revenue Bonds for \$5,945,000 to finance the construction of certain improvements to the Tracy Pumping Plant located in Tracy, California. As stipulated by the bond indenture, the District has agreed to guarantee the repayment of principal plus accrued interest attributable to the obligation of other members of the Authority in the event of their default. The total outstanding principal and interest for these other members was approximately \$40,755 as of February 29 2008. Management believes the likelihood of default of other members of the Authority is remote, and accordingly, no liability has been recorded in these financial statements.

The Authority is governed by a board consisting of representation from each member district. The board controls the operations, including selection of management and approval of operating budgets, independent of influence by the member districts beyond their representation on the board. The relationship between the District and the Authority is such that the Authority is not a component unit of the District for financial reporting purposes.

The most recent condensed financial information of the Authority as of February 28, 2005 (fiscal year 2004-2005) shows total assets of \$17,625,162 and total liabilities of \$12,480,208 with net assets at \$5,144,954. Revenues were \$11,467,642 with expenses of \$11,444,241 for an excess of revenues over expenses of \$23,401.

**Risk Management:** The District maintains general liability, property, auto, crime and excess liability coverage through the Water Districts Insurance Program provided by the Arch Insurance Company (AM Best Rating A).

General liability coverage, which encompasses wrongful acts, bodily, personal and professional injury, including public officials' errors and omissions and employment practices, as well as auto liability coverage, is \$11,000,000 per occurrence, with a \$5,000 deductible. (\$1,000,000 per occurrence, \$3,000,000 aggregate plus \$10,000,000 excess liability.)

**WESTLANDS WATER DISTRICT  
NOTES TO FINANCIAL STATEMENTS  
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(continued)**

Coverage for buildings and business personal property, including property coverage extensions, is \$73,105,236. Coverage also includes a "margin clause" that will increase the District's limits of property coverage by 25% in the event of loss or damage. Scheduled mobile equipment is separately covered for \$1,000,000. Boiler and machinery coverage is limited at \$20,000,000. All coverage deductibles are \$5,000.

The crime insurance covers dishonesty; forgery; theft, disappearance and destruction (inside and outside); and computer fraud at a limit of \$100,000 for each. Each of the coverage's has a \$500 deductible.

**Other Litigation:** The District is also a party to other legal proceedings and claims, which arise during the ordinary course of business. In the opinion of management, the ultimate outcome of the claims and litigation will not have a material adverse effect on the District's financial position.

**Subsequent Events:** On April 30, 2008, the District issued \$30,065,000 Revenue Certificates of Participation, Series 2008A to refund the outstanding Revenue Certificates of Participation, Series 2005B. The refunded bonds are considered defeased and the liability will be removed from the Statement of Net Assets. The reacquisition price exceeded the net carrying value of the old debt by \$2,228,955, and such amount will be amortized through March 2029 over the life of the new debt which is the same as the old debt.



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June 20, 2008

Board of Directors  
Westlands Water District  
Fresno, California

REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER  
MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH  
GOVERNMENT AUDITING STANDARDS

We have audited the financial statements of Westlands Water District, as of and for the years ended February 29, 2008, and have issued our report thereon dated June 20, 2008. We have conducted our audit in accordance with auditing standards generally accepted in the United States of America, and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered Westlands Water District's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the internal control over financial reporting.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the District's ability to initiate, authorize, record, process, or report financial data reliably in accordance with generally accepted accounting principles such as that there is more than a remote likelihood that a misstatement of the District's financial statements that is more than inconsequential will not be prevented or detected by the District's internal control.

A material weakness is a significant deficiency, or combination of significant deficiencies, that result in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the District's internal control.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

Westlands Water District

June 20, 2008

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Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Westlands Water District's financial statements are free of material misstatements, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grants, noncompliance with which could have a direct material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

This report is intended solely for the information and use of Westlands Water District's management, board of directors and others within the entity and is not intended to be and should not be used by anyone other than these specified parties.

*Sampson & Sampson*

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## APPENDIX E

### INFORMATION CONCERNING THE DEPOSITORY TRUST COMPANY

*The information in this section concerning DTC and DTC's book-entry only system has been obtained from sources that the Authority and the Underwriter believe to be reliable, but neither the Authority nor the Underwriter takes any responsibility for the completeness or accuracy thereof. The following description of the procedures and record keeping with respect to beneficial ownership interests in the Notes, payment of principal, premium, if any, accreted value, if any, and interest with respect to the Notes to DTC Participants or Beneficial Owners, confirmation and transfers of beneficial ownership interests in the Notes and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC.*

The Depository Trust Company ("DTC"), New York, NY, will act as securities depository for the Notes. The Notes will be executed and delivered as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Note will be executed and delivered for each annual maturity of the Notes, each in the aggregate principal amount of such annual maturity, and will be deposited with DTC.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code, and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC's participants ("Direct Participants") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities Notes. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has Standard & Poor's highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of Notes under the DTC system must be made by or through Direct Participants, which will receive a credit for the Notes on DTC's records. The ownership interest of each actual purchaser of each Note ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Notes are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners.

Beneficial Owners will not receive Notes representing their ownership interests in Notes, except in the event that use of the book-entry system for the Notes is discontinued.

To facilitate subsequent transfers, all Notes deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Notes with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Notes; DTC's records reflect only the identity of the Direct Participants to whose accounts such Notes are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Notes may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Notes, such as prepayments, tenders, defaults, and proposed amendments to the Note documents. For example, Beneficial Owners of Notes may wish to ascertain that the nominee holding the Notes for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

Prepayment notices shall be sent to DTC. If less than all of the Notes within a maturity are being prepaid, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such maturity to be prepaid.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to Notes unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Authority as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Notes are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Prepayment proceeds, distributions, and dividend payments on the Notes will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Authority or the Trustee, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee, or the Authority, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of prepayment proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Authority or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

A Note Owner shall give notice to elect to have its Notes purchased or tendered, through its Participant, to the Trustee, and shall effect delivery of such Note by causing the Direct Participant to transfer the Participant's interest in the Notes, on DTC's records, to the Trustee. The requirement for physical delivery of Notes in connection with an optional tender or a mandatory purchase will be deemed

satisfied when the ownership rights in the Notes are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered Notes to the Trustee's DTC account.

DTC may discontinue providing its services as depository with respect to the Notes at any time by giving reasonable notice to the Authority or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, physical Notes are required to be printed and delivered.

The Authority may decide to discontinue use of the system of book-entry only transfers through DTC (or a successor securities depository). In that event, Notes will be printed and delivered to DTC.

THE TRUSTEE, AS LONG AS A BOOK-ENTRY ONLY SYSTEM IS USED FOR THE NOTES, WILL SEND ANY NOTICE OF PREPAYMENT OR OTHER NOTICES TO OWNERS ONLY TO DTC. ANY FAILURE OF DTC TO ADVISE ANY DTC PARTICIPANT, OR OF ANY DTC PARTICIPANT TO NOTIFY ANY BENEFICIAL OWNER, OF ANY NOTICE AND ITS CONTENT OR EFFECT WILL NOT AFFECT THE VALIDITY OF SUFFICIENCY OF THE PROCEEDINGS RELATING TO THE PREPAYMENT OF THE NOTES CALLED FOR PREPAYMENT OR OF ANY OTHER ACTION PREMISED ON SUCH NOTICE.

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## APPENDIX F

### FORM OF WESTLANDS WATER DISTRICT CONTINUING DISCLOSURE CERTIFICATE

*Upon the execution and delivery of the Notes, Westlands Water District proposes to enter into a Continuing Disclosure Certificate in substantially the following form:*

This Continuing Disclosure Certificate (the “Disclosure Certificate”) is executed and delivered by Westlands Water District (the “District”) in connection with the execution and delivery of \$\_\_\_\_\_ San Luis & Delta-Mendota Water Authority Revenue Notes (DHCCP Development Project), Series 2009A (the “Notes”). The Notes are being executed and delivered pursuant to an Indenture of Trust, dated as of March 1, 2009 (the “Trust Indenture”), by and between San Luis & Delta-Mendota Water Authority (the “Authority”) and Union Bank, N.A., as trustee (the “Trustee”). The District covenants and agrees as follows:

1. Purpose of this Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the District for the benefit of the Holders and Beneficial Owners of the Notes and in order to assist the Participating Underwriter in complying with the Rule.

2. Definitions. In addition to the definitions set forth in the Trust Indenture, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the District pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

“Beneficial Owner” shall mean any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Notes (including persons holding Notes through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Notes for federal income tax purposes.

“Fiscal Year” shall mean the one-year period ending on the last day of February of each year.

“Holder” means a registered owner of the Notes.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Certificate.

“National Repository” shall mean any Nationally Recognized Municipal Securities Information Repository for purposes of the Rule. The National Repositories currently approved by the Securities and Exchange Commission are included in a list which is maintained on the Internet at <http://www.sec.gov/consumer/nrmsir.htm>.

“Participating Underwriter” shall mean Citigroup Global Markets Inc., as the original underwriter of the Notes required to comply with the Rule in connection with offering of the Notes.

“Repository” shall mean each National Repository and each State Repository.

“Rule” shall mean Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“State” shall mean the State of California.

“State Repository” shall mean any public or private repository or entity designated by the State as a state repository for the purpose of the Rule and recognized as such by the Securities and Exchange Commission. As of the date of this Disclosure Certificate, there is no State Repository.

3. Provision of Annual Reports.

(a) The District shall provide not later than 270 days following the end of its Fiscal Year (commencing with the Fiscal Year 2009) to each Repository an Annual Report relating to the immediately preceding Fiscal Year which is consistent with the requirements of Section 4 of this Disclosure Certificate, which Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Certificate.

(b) If the District is unable to provide to each Repository an Annual Report by the date required in subsection (a), the District shall send to each Repository a notice in substantially the form attached hereto as Exhibit A.

4. Content of Annual Reports. The Annual Report shall contain or incorporate by reference the following:

(a) The audited financial statements of the District for the prior fiscal year, prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the District’s audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they come available.

(b) Principal amount of the Notes outstanding.

(c) An update of the information in the following tables in Appendix D under caption entitled “Information Concerning Westlands Water District” in the Official Statement:

1. “CALENDAR YEAR 2008 CROP VALUES” on page D-\_\_;
2. “HISTORIC WATER USAGE” on page D-\_\_; and
3. “HISTORIC OPERATING RESULTS AND DEBT SERVICE COVERAGE” on page D-\_\_.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the District or related public entities, which have been submitted to each of the Repositories; provided, that if any document included by reference is a final official statement, it must be available from the Municipal Securities Rulemaking Board; and provided further, that the District shall clearly identify each such document so included by reference.

5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, the District shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Notes or the San Luis & Delta-Mendota Water Authority Delta Habitat Conservation and Conveyance Program Activity Agreement, dated as of March 1, 2009, by and between the District and the Authority, as applicable, if material:

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults;
- (iii) modifications to rights of Noteholders;
- (iv) optional, contingent or unscheduled Note calls;
- (v) defeasances;
- (vi) rating changes;
- (vii) adverse tax opinions or events affecting the tax-exempt status of the Notes;
- (viii) unscheduled draws on the debt service reserves reflecting financial difficulties;
- (ix) unscheduled draws on the credit enhancements reflecting financial difficulties;
- (x) substitution of the credit or liquidity providers or their failure to perform; and
- (xi) release, substitution or sale of property securing repayment of the Notes.

(b) Whenever the District obtains knowledge of the occurrence of a Listed Event, the District shall as soon as possible determine if such event would be material under applicable federal securities laws.

(c) If the District determines that knowledge of the occurrence of a Listed Event would be material under applicable federal securities laws, the District shall promptly file a notice of such occurrence with the Repositories. Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(4) and (5) need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to Holders of affected Notes pursuant to the Trust Indenture.

6. Customarily Prepared and Public Information. Upon request, the District shall provide to any person financial information and operating data regarding the District which is customarily prepared by the District and is publicly available.

7. Termination of Obligation. The District's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior prepayment or payment in full of all of the Notes. If such termination occurs prior to the final maturity of the Notes, the District shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).

8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the District may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that, in the opinion of nationally recognized bond counsel, such amendment or waiver is permitted by the Rule.

9. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the District from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the District chooses to include any information in any notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the District shall not thereby have any obligation under this Disclosure Certificate to update such information or include it in any future notice of occurrence of a Listed Event.

10. Default. In the event of a failure of the District to comply with any provision of this Disclosure Certificate, any Holders or Beneficial Owners of at least 50% aggregate principal amount of the Notes may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Trust Indenture, and the sole remedy under this Disclosure Certificate in the event of any failure of the District to comply with this Disclosure Certificate shall be an action to compel performance.

11. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the District, the Participating Underwriter and Holders and Beneficial Owners from time to time of the Notes, and shall create no rights in any other person or entity.

Dated: April \_\_, 2009

WESTLANDS WATER DISTRICT

By: \_\_\_\_\_  
Its: President



**EXHIBIT A**

**NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT**

Name of Obligor: WESTLANDS WATER DISTRICT

Name of Obligation: SAN LUIS & DELTA-MENDOTA WATER AUTHORITY REVENUE NOTES  
(DHCCP DEVELOPMENT PROJECT), SERIES 2009A

Date of Execution and Delivery: April \_\_, 2009

NOTICE IS HEREBY GIVEN that the District has not provided an Annual Report with respect to the above-named Notes as required by the Continuing Disclosure Certificate approved pursuant to a Resolution adopted by the Board of Directors of the District on \_\_\_\_\_, 2009. The District anticipates that the Annual Report will be filed by \_\_\_\_\_.

Dated: \_\_\_\_\_

WESTLANDS WATER DISTRICT

By: \_\_\_\_\_

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## **FITCH RATES \$50MM SAN LUIS & DELTA MENDOTA WATER AUTH., CALIFORNIA REVS 'A'; OUTLOOK STABLE**

Fitch Ratings-Austin-05 March 2009: Fitch Ratings has assigned an 'A' rating to San Luis & Delta Mendota Water Authority, California's (authority) \$50 million revenue notes (DHCCP Development Project), series 2009. The notes are secured by an unconditional contractual obligation from Westlands Water District, California (WWD). Fitch also affirms the 'A' rating on approximately \$230 million outstanding revenue certificates of participation (COPs) of the WWD. The Rating Outlook is Stable.

Scheduled to sell on March 18, 2009 the notes will fund the Central Valley Project (CVP) federal contractor's share of the Delta Habitat Conservation and Conveyance Program (DHCCP) development costs. The notes constitute a special obligation of the authority payable solely from contractual obligations of project participating members, including, but not limited to, WWD. However, WWD is contractually obligated to pay 100% of the principal of and interest on the notes should the authority not receive payments from other members. Approximately 95% of the authority members have filed a notice of intent to participate in the financing. The notes have a balloon maturity due on March 1, 2014 with semiannual interest payments due on each March 1 and Sept. 1. It is the intention of the authority to refinance the notes upon maturity.

The 'A' rating reflects the role of WWD as obligor and its underlying credit quality, including satisfactory financial operations marked by annual surpluses and solid liquidity. The WWD provides agricultural water services to a vast agricultural economy. The inherent value in the district's extensive water entitlements through its role as the contractor with the federally owned CVP is a credit strength. Offsetting credit considerations are the risk of the availability of CVP water, its increasing costs, high revenue concentration resulting from the small number of customers/land owners of WWD, and future capital needs that are potentially substantial to secure future CVP water deliveries. Key rating drivers are the ability to remarket the notes upon maturity in 2014, WWD's ability to levy and collect increased land assessments, and ultimate costs attributable to WWD and the authority associated with expected construction of the DHCCP.

The authority was established in January 1992 and consists of 32 water agencies representing approximately 2.1 million acres of federal and exchange water service contractors within the western San Joaquin Valley and in San Benito and Santa Clara counties. It was established to assume the operation and maintenance responsibilities of certain United States Bureau of Reclamation (USBR) CVP facilities. The WWD is one of 32 member participants of the authority and has water entitlements to around one-half of the total 2.9 million acre-feet (MAF) available to the authority.

WWD covers 617,700 acres in Fresno and Kings County on the west side of the San Joaquin Valley. It is the largest irrigation district in the U.S. by acreage. WWD's CVP entitlement totals 1.15 MAF, although actual deliveries of CVP water averaged 802,000 acre-feet (68% of entitlement) from fiscal 2000-2008. A nine-member board elected by landowners governs WWD's policies and operations. The board maintains full independent rate-setting authority as well as the ability to place a lien on property if water bills are unpaid, resulting in very low delinquencies.

There is concentration amongst WWD water purchasers. But offsetting this risk somewhat is the value of the cash crops farmed in the district (about \$1.3 billion in fiscal 2008) and the absence of alternative/equivalent supplies or infrastructure to deliver water. In addition, WWD potentially has the ability to sell and transfer water rights outside the district should agriculture cease to be economic, as the demand for water in southern California and the San Francisco Bay area by users with connectivity to the CVP is very high.

WWD has multiple rates and charges designed to recoup its costs, including, among others, CVP contract rates, acreage charges, supplemental water charges, and power surcharge charges, as well

as land based charges and assessments. Historical water enterprise financial operations are favorable, with positive annual results, good liquidity levels and designated reserves, and adequate debt service coverage. Annual debt service coverage ranged from 1.4 times (x) to 2.1x between fiscal years 2004-2008, and financial projections reflect similar coverage ratios through fiscal 2013. Liquidity levels as measured by days of cash on hand working capital is solid at 264 days and 166 days, respectively at the end of fiscal 2008.

WWD's current capital needs appear manageable and are focused on acquiring additional water entitlements, possibly expanding the distribution system to a small area currently not served, and development of drainage facilities to address the saline subsurface water. However, capital costs related to WWD, as well as the authority, could escalate significantly in the near future as a result of construction costs related to the DHCCP.

The DHCCP is a program consisting of joint efforts by agencies of the federal government and the State of California and local agencies to fund and plan habitat conservation and water supply activities in the Sacramento San Joaquin River Delta/San Francisco Bay Estuary (the Bay Delta), including Bay Delta water conveyance options. Pursuant to a Memorandum of Agreement, the authority, the California Department of Water Resources (DWR), the USBR, the Santa Clara Valley Water District (SCVWD, a member of the authority), the State Water Project Contractors Authority (SWPCA), the Metropolitan Water District of Southern California (MWD) and the Kern County Water Agency (KCWA) (each a member of the SWPCA), and WWD have agreed to undertake the planning, the preliminary design and environmental compliance activities with respect to the DHCCP. The current DWR estimate cost of the preliminary phase of the DHCCP is \$140 million. Also pursuant to the MOA, 50% of the DHCCP Development Costs are allocated to the authority (including WWD and SCVWD) (the Federal Share) with the remaining 50% of such costs being allocated to DWR (including SWPCA, MWD and KCWA).

The cost of the DHCCP project is currently uncertain but is expected to be substantial. Moreover, the ultimate source of funding for such a massive undertaking remains to be determined. Further leverage on the WWD and the authority could apply downward pressure on the ratings.

Contact: Gabriela Quiroga +1-512-215-3731, Austin; or Karen Ribble +1-415-732-1756, San Francisco.

Media Relations: Cindy Stoller, New York, Tel: +1 212 908 0526, Email: [cindy.stoller@fitchratings.com](mailto:cindy.stoller@fitchratings.com).

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**To:** Bobbie Ormonde[bormonde@westlandswater.org]  
**Cc:** 'Dan Pope'[dpope@westlandswater.org]; david.houston@citi.com[david.houston@citi.com]; 'Brown, Douglas S.'[DBROWN@SYCR.com]; tbirmingham@westlandswater.org[tbirmingham@westlandswater.org]; Dyson, Paul[paul.dyson@standardandpoors.com]  
**From:** Weil, Chloe  
**Sent:** Mon 3/28/2016 11:48:32 PM  
**Subject:** RE: S&P Revised Outlook  
[Westlands Water District S&P Report 2016 Review.pdf](#)

Final report attached. Thank you,

Chloe Weil  
Standard and Poor's  
415-371-5026

---

**From:** Bobbie Ormonde [mailto:bormonde@westlandswater.org]  
**Sent:** Monday, March 28, 2016 2:40 PM  
**To:** Weil, Chloe (Analytical)  
**Cc:** 'Dan Pope'; david.houston@citi.com; 'Brown, Douglas S.'; tbirmingham@westlandswater.org; Dyson, Paul (Analytical)  
**Subject:** RE: S&P Revised Outlook

Chloe,

I left you a voice message. Could you please call me when you have moment to discuss our comments?

Bobbie Ormonde  
Director of Finance and Administration  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 93703  
(559) 241-6203

---

**From:** Weil, Chloe [mailto:chloe.weil@standardandpoors.com]  
**Sent:** Monday, March 28, 2016 12:25 PM  
**To:** Bobbie Ormonde  
**Cc:** 'Dan Pope'; 'david.houston@citi.com'; Brown, Douglas S.; [tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org); Dyson, Paul  
**Subject:** RE: S&P Revised Outlook

Good afternoon—

We are sending you this draft report so that you can call our attention to any factual errors or the inadvertent inclusion of confidential information in the draft. In particular, could you please confirm the amount of CVP and supplemental water deliveries in fiscals 2013 – 2015?

If you have any questions or comments on the analysis that are not factual in nature, we ask that you discuss these matters with us. We will use our sole discretion in making editorial changes to the document, which represents our independent opinion. We typically finalize and release our report after a period of approximately two (2) hours from the time we have sent this email regardless of whether we have received a reply. The report will supersede the information in the draft; the information in the draft is confidential and remains confidential after the issuance of a report and should not be disclosed or released at any time before or after the report is published.

Could you please send comments back to me by close of business today? Please let me know as soon as possible if you will be unable to meet this deadline.

Per policy, if multiple persons are reviewing this draft, we kindly ask that one person consolidate corrections from others into one document or email prior to sending back to us. We cannot accept multiple drafts or emails (with corrections) back in return.

Regards,

Chloe

Chloe Weil  
Standard and Poor's  
415-371-5026

---

**From:** Weil, Chloe (Analytical)

**Sent:** Friday, March 25, 2016 1:04 PM

**To:** 'Bobbie Ormonde'

**Cc:** 'Dan Pope'; 'david.houston@citi.com'; 'Brown, Douglas S.'; 'tbirmingham@westlandswater.org'; Dyson, Paul (Analytical)

**Subject:** S&P Revised Outlook

Bobbie—

We appreciate the assistance you provided getting the information we needed to conduct our review.

I am attaching a copy of the press release regarding the outlook change that was released this morning. I will send you a draft of the full report to review for factual accuracy on Monday.

Happy Easter to all who celebrate.

Regards,  
Chloe



**Chloe Weil**  
Director, U.S. Public Finance Infrastructure Group

Standard & Poor's Ratings Services  
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T 415.371.5026 | F 415.371.5090  
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## Summary:

Westlands Water District, California  
San Luis & Delta-Mendota Water  
Authority; Joint Criteria; Water/Sewer

### Primary Credit Analyst:

Chloe S Weil, San Francisco (1) 415-371-5026; [chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)

### Secondary Contact:

Paul J Dyson, San Francisco (1) 415-371-5079; [paul.dyson@standardandpoors.com](mailto:paul.dyson@standardandpoors.com)

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Rationale

Outlook

Related Criteria And Research

## Summary:

# Westlands Water District, California San Luis & Delta-Mendota Water Authority; Joint Criteria; Water/Sewer

Credit Profile		
<b>Westlands Wtr Dist wtr &amp; swr</b>		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
<b>San Luis &amp; Delta-Mendota Wtr Auth, California</b>		
Westlands Wtr Dist, California		
San Luis & Delta-Mendota Wtr Auth (Westlands Wtr Dist) (BAM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

## Rationale

Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs); and
- 'A+' rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, of which Westlands Water District is the guarantor.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Securities and Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1.0x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's extraordinary accounting transaction that were the subject of the proceedings. Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as "vulnerable" and will continue to monitor the district's continuing disclosure practices. However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We believe the district's current financial position remains comparable to that of its peers at the current



rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon.

The ratings further reflect our assessment of the district's:

- Strong market position as the sole provider of irrigation water in a diverse agricultural area;
- Revised rate structure that enhances revenue stability despite significant increases in supplemental water supply costs and fluctuations in water deliveries from the U.S. Bureau of Reclamation's Central Valley Project (CVP);
- Significant progress on the decades-long dispute with the Bureau of Reclamation regarding drainage-impaired soils in the service territory, although the legal settlement remains subject to congressional approval; and
- Future challenges associated with the procurement of additional raw water sources over the long-term horizon.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The valley has been farmed with irrigation water in varying degrees for approximately half a century, and could not exist on its current scale without major water infrastructure programs such as the CVP. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable, and produces high-value permanent crops, such as almonds and pistachios, as well as tomatoes, grapes, and cantaloupes. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

Water sales and purchased water costs are the district's primary revenue sources and expenses. The main water source comes from a 1.195 million acre-foot contract entitlement with the U.S. Bureau of Reclamation's CVP. The district serves as the leading provider of imported water to the region. Supply mix can vary significantly from year to year based on CVP allocations, which are driven by hydrology. The annual safe yield of the confined underground aquifer adds another 200,000 acre-feet and local farmers generally extract as much groundwater as possible, but CVP allocations and groundwater supplies have long been inadequate to meet the region's water demand, which is approximately 1.2 million acre-feet. Accordingly, the district is continually engaged in efforts to supplement its water supply from outside sources. In recent years, the district has provided between one-half and two-thirds of all water consumed in the service area through higher-cost supplemental purchases.

As the district's financial performance is hydrology-dependent, the district performs robust financial forecasting and is proactive in maintaining relationships with other water districts and key stakeholders to ensure adequate water transfers, and to that end has been adept at securing regulatory approvals to receive supplemental water.

Weather-normalized, formal historic trend analysis is performed and updated annually for both revenue and expenses; and we believe regular efforts are made to determine whether one or more factors will cause revenues or expenses to deviate from their long-term trends over the next few years. In addition, beginning in fiscal year 2011, to help alleviate the burden on water users for the increased cost of water in short water supply years, the district's board elected to collect half of the operations & maintenance charges through a land-based charge to landowners rather than through the water rate.

On Sept. 15, 2015, the U.S. Department of Justice and Westlands approved a settlement ending a decades-long dispute over the Bureau of Reclamation's responsibility to provide drainage for the farmland within Westlands. The drainage

settlement requires Westlands to assume full responsibility for drainage management within its boundaries, and will cap CVP deliveries at 75% of the district's contract entitlement. Furthermore, Westlands will be required to retire a minimum of 100,000 acres of land and to repurpose the non-irrigated lands for environmentally friendly uses. We view the settlement as manageable as the district has already acquired 90,000 acres of land for this purpose. The district also has over \$40 million in designated reserves that could be used to meet the remaining requirements under the settlement.

The district's financial performance has been sound in our view over the past five years, despite the impact of the ongoing drought on the district's water supply. Senior lien debt service coverage (DSC) improved to 2.1x in fiscal 2015 from 1.8x in fiscal 2014, while all-in DSC, which adjusts for the district's fixed charges included in operating expenses, the district's subordinated lien obligations, and the impact of one-time land sales on revenues, improved to 1.6x from 1.2x, which we consider good. Based on unaudited results, we expect all-in DSC in fiscal 2016 to remain strong, at about 1.7x, excluding one-time land sales. Based on management's forecast, we expect all-in DSC to decline to about 1.0x in fiscal 2017, which we consider adequate at the current rating level. With a debt-to-capitalization ratio of about 55% as of February 28, 2015, we consider the district to be moderately leveraged.

The district's liquidity position is strong, in our view. The district's cash and cash equivalents as of Feb. 29, 2016 (unaudited) was \$102 million, which represented 314 days' of operating expenses. We understand that the district maintains a strong liquidity position, in part to enable it to opportunistically acquire water rights or otherwise firm up its water supply.

The proposed California WaterFix (the revised approach to the Bay Delta Conservation Plan), a comprehensive plan for the Bay-Delta to address environmental and water supply issues, if adopted and implemented, would entail substantial infrastructure investment in the Delta and implementation of other conservation measures. The capital costs associated with this project will likely be large--most recently estimated at \$14.6 billion, and the district estimates that its proportionate share would be about \$2.4 billion. However, we recognize that the method for financing the project has not been established, and the district has no obligation to fund these future costs. However, we believe that substantial increases in the district's land-based charges and CVP water rates will be necessary to cover the district's (yet to be determined) share of the planned Bay Delta improvements. Even so, we believe that the CVP water may remain the district's lowest cost source of water, and is critical to support the region's agricultural output.

## Outlook

The stable outlook reflects our view of the district's competitive position as the leading provider of supplemental water to a region with strong water demand and scarce water resources. During the two-year outlook period, we anticipate that the district will continue to sustain its good coverage metrics and extremely strong liquidity position while managing its water supply. We also expect the district to finalize its plans regarding the drainage settlement and that the district currently has ample capital funding capacity to execute the requirements under the agreement.

### Upside scenario

Although not anticipated, due to the district's service territory characteristics and potential shifts in the water supply portfolio, we may raise the ratings if the district is able to stabilize and sustain strong coverage metrics and if the local

service economy strengthens and diversifies such that its characteristics are comparable to those of peers at a higher rating level.

#### Downside scenario

We may lower the ratings if changes to the water supply portfolio or unexpected capital needs cause the district's financial metrics to materially erode.

## Related Criteria And Research

#### Related Criteria

- USPFCriteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- USPFCriteria: Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- USPFCriteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- Criteria: Use of CreditWatch And Outlooks, Sept. 14, 2009

#### Related Research

- U.S. State And Local Government Credit Conditions Forecast, Jan. 11, 2016
- U.S. Municipal Water And Sewer Utilities 2014 Sector Outlook: Learning To Do More With Less, Jan. 9, 2014

Ratings Detail (As Of March 28, 2016)		
Westlands Wtr Dist wtr & swr (AGM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
Westlands Wtr Dist (Westlands Wtr Dist) JOINT CRIT		
<i>Long Term Rating</i>	AAA/A-1	Current
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

Many issues are enhanced by bond insurance.

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of Ratings Direct at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

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**To:** Tom Birmingham[tbirmingham@westlandswater.org]; "Dan Pope[dpope@westlandswater.org]  
**From:** Bobbie Ormonde  
**Sent:** Mon 10/3/2016 6:59:53 PM  
**Subject:** FW: Westlands Review

Tom and Dan,

I was contacted this morning at approximately 10:15 a.m. by Michael Cheng from the State Controller's Office. He originally was wanting to commence the audit next week. I indicated that next week was not practical based on the District's current open projects in the Finance Division. I informed him that November would be a better time period to start the audit. Michael indicated that the audit would last from 6 to 8 weeks. I requested that Michael outline the audit process in an e-mail and that I would follow up with him.

Are you both available to discuss this matter within the next few days?

Bobbie Ormonde  
Director of Finance and Administration  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 93703-6056  
(559) 241-6203

---

**From:** MCheng@sco.ca.gov [mailto:MCheng@sco.ca.gov]  
**Sent:** Monday, October 3, 2016 11:44 AM  
**To:** bormonde@westlandswater.org  
**Cc:** CLek@sco.ca.gov; ELoste@sco.ca.gov  
**Subject:** Westlands Review

Hi Bobbie,

This is Michael, the auditor from the State Controller's Office. This is a follow-up email regarding the scheduling of an internal control review of the Westlands Water District. I CC'ed my managers.

As discussed over the phone, we might be able to start near the end of October. Let me know when we can finalize the date. We anticipate completing the fieldwork in approximately six to eight weeks.

Our review will include an analysis of the administrative and internal accounting controls and fiscal management of the district and will focus on the period of March 1, 2013, through February 28, 2015; however, if issues come to our attention, we may expand our work to include prior and/or current periods.

The review will be conducted under the Government Code section 12410 which requires the Controller to "...superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment."

Additionally, Government Code section 12891.2 grants the Controller the authority to audit the books and records of public agencies receiving loans or grants for local water projects.

Please contact me if you have any questions. We look forward to working with you.

Thanks,  
**Michael Cheng, CPA**

Audit Specialist  
State Controller's Office  
Division of Audits - Local Government Audits Bureau  
(916) 322-5235 | [mcheng@sco.ca.gov](mailto:mcheng@sco.ca.gov)

**To:** Env-trinity[env-trinity@velocipede.dcn.davis.ca.us]  
**From:** env-trinity  
**Sent:** Fri 3/11/2016 4:36:56 PM  
**Subject:** [env-trinity] LA Times: Hiltzik FEDS SLAM (WESTLANDS) FOR COOKING ITS BOOKS, "...SEC Action Casts A Shadow Over \$200 Million in Bonds Issued By Westlands..."  
[Untitled attachment 13593.txt](#)

*The implications of all this are serious. For one thing, it shows that Westlands management is willing to mislead investors simply to save money for its users. It raises the question of whether a district that behaves this way is a suitable partner for the federal government in other deals, including the huge litigation settlement last year that was negotiated in secret, and that amounted to a huge federal giveaway to the district. And it could affect a congressional debate over that settlement. It should.*

*The SEC action casts a shadow over \$200 million in bonds issued by Westlands and a neighboring district, which have been placed on negative credit watch by the rating agency Moody's. But the darkest shadow is cast over the cause of good governance. As long as senior officials can boast about doing "Enron accounting" and then, when they're caught, get off without admitting their wrongdoing for the record, there's little hope that the public interest will be protected.*

**Los Angeles Times**

Michael Hiltzik Columnist  
[BUSINESS Michael Hiltzik](#)

**The feds slam a big water agency for cooking its books -- but they didn't go far enough**





Canal cuts through the giant Westlands Water District (AP)

By Michael Hiltzik

The Westlands Water District is the biggest of big shots in the water world of California's Central Valley -- so big that it was able late last year to [beat the federal government in a secret deal](#) to secure a reliable water supply for its member almond and pistachio growers in perpetuity -- despite the fact that the deal makes a hash of efforts to produce an overall state water policy.

But on Wednesday, the [Securities and Exchange Commission](#) unveiled another aspect to Westlands' way of doing business: [cooking the books](#). The SEC slapped the district and two officers with a total of \$195,000 in penalties for faking financial records in connection with a 2012 bond issue.

A little Enron accounting.

Westlands General Manager Thomas Birmingham describes the financial finagling caught by the SEC As [my colleague Geoffrey Mohan reports](#), the SEC is crowing about this being its largest settlement ever in a case against a municipal bond agency. Sadly, however, the agency's action is just another slap on the wrist for white collar wrongdoers. Nothing in the settlement, big as it is, will deter either Westlands or any other municipal bond issuer from trying to pull the same stunt in the future.

What's especially disturbing is that the SEC, despite calling this a case of "negligence," had evidence that the district and its officers, General Manager Thomas Birmingham and former Treasurer Louie Ciapponi, knew exactly what they were doing. When questioned by a Westlands board member about the transaction at issue, Birmingham joked that they were engaging in "a little Enron accounting."

Yet no one admitted to wrongdoing in the settlement, making this another case of something being done illegally, yet without any human being actually being identified as the wrongdoing party. What's left unsaid in the SEC action is why Birmingham or Ciapponi should be henceforth permitted to hold any official office with an agency issuing bonds to the public. Also escaping scot-free, at least for the moment, is the "independent auditor" who told Westlands that the financial maneuvers the SEC found improper were "permissible."

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**Related:**

[How a rich water district beat the government in a secret deal](#)

[A huge water district defends a secret handout](#)

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The auditing firm isn't identified in the SEC documents, but the firm whose 2012 Westlands audit is attached to [the bond circular at the heart of the SEC's case](#) is Clovis-based Sampson, Sampson & Patterson. We've asked the firm to comment, but have not received a response. Let's look at what they were up to. In 2009, the district discovered that its revenues would fall \$10 million below what it needed to meet bond covenants requiring it to collect 25% more each year than it had to pay in principal and interest on its debt. In fact, because of the drought, its coverage ratio wasn't 1.25, but as little as 0.11. Had that happened, it would have been in technical default on some of its bonds.

**WESTLANDS WATER DISTRICT**  
**Historic Operating Results and Debt Service Coverage (Fiscal Years)**

	2008	2009	2010	2011	2012
<b>Revenues:</b>					
Irrigation Water Sales <sup>(1)</sup>	\$ 78,343,795	\$ 80,006,486	\$ 92,503,663	\$ 132,490,566	\$ 109,590,756
Municipal & Industrial Water Sales	2,237,998	2,908,914	2,512,549	2,175,955	1,770,251
Interest Income	3,517,648	2,281,529	1,755,018	1,174,505	1,149,500
Assessments and Other Charges	15,098,689	15,381,390	17,364,590	29,797,812	28,596,459
Other Revenue	<u>2,988,623</u>	<u>1,009,733</u>	<u>1,971,231</u>	<u>2,567,485</u>	<u>3,748,920</u>
<b>Total Revenues</b>	<b>\$ 102,186,753</b>	<b>\$ 101,588,052</b>	<b>\$ 116,107,051</b>	<b>\$ 168,206,323</b>	<b>\$ 144,855,886</b>
<b>Expenses:</b>					
Purchased Water	\$ 60,723,897	\$ 62,010,512	\$ 72,497,058	\$ 111,617,544	\$ 90,430,229
Pumping	217,412	250,985	193,671	216,921	256,449
Transmission and Distribution <sup>(2)</sup>	4,172,752	4,555,725	5,303,018	6,136,685	5,733,454
Administrative	11,315,258	14,001,676	18,050,281	18,560,338	18,378,677
Westlands Water District DHCCP Activity Agreement – 2009 Notes <sup>(3)</sup>	--	--	--	2,249,856	2,249,997
SLDMWA Project Contract <sup>(4)</sup>	<u>425,216</u>	<u>(8,567)</u>	--	--	--
<b>Total Expenses</b>	<b>\$ 76,854,535</b>	<b>\$ 80,810,331</b>	<b>\$ 96,044,028</b>	<b>\$ 138,781,344</b>	<b>\$ 117,048,806</b>
<b>Net Revenues</b>	<b>\$ 25,332,218</b>	<b>\$ 20,777,721</b>	<b>\$ 20,063,023</b>	<b>\$ 29,424,979</b>	<b>\$ 27,807,080</b>
<b>Contract Payments</b>					
Series 1999A Installment Payments <sup>(5)</sup>	\$ 835,923	\$ 809,213	\$ (36,034)	\$ --	\$ --
Series 2002A Installment Payments	6,463,420	6,479,413	6,481,588	6,481,812	6,481,638
Series 2005A Installment Payments	3,699,055	3,685,712	3,686,737	3,686,387	3,684,775
Series 2005B Installment Payments	1,344,445	443,200	--	--	--
Series 2007A Installment Payments	1,692,669	2,285,750	2,284,850	2,284,663	2,288,375
Series 2007B Installment Payments	233,971	1,311,156	1,311,856	1,311,956	1,311,456
Series 2008A Installment Payments	--	950,348	1,901,439	1,905,053	2,029,617
State Irrigation Loan #1	64,465	64,502	64,427	64,387	64,347
State Irrigation Loan #2	<u>323,055</u>	<u>322,640</u>	<u>322,830</u>	<u>322,818</u>	<u>323,457</u>
<b>Total Contract Payments</b>	<b>\$ 14,657,003</b>	<b>\$ 16,351,934</b>	<b>\$ 16,017,693</b>	<b>\$ 16,057,076</b>	<b>\$ 16,183,665</b>
<b>Coverage Ratio<sup>(6)</sup></b>	<b>1.73</b>	<b>1.27</b>	<b>1.25</b>	<b>1.83</b>	<b>1.72</b>
<b>Subordinate Contract Payments</b>					
1965 Contract	\$ 3,982,714	\$ 3,982,714	\$ 4,058,386	\$ 3,982,714	\$ 3,982,714
Prop 44 Loan	<u>75,642</u>	<u>75,578</u>	<u>75,482</u>	<u>71,776</u>	--
<b>Total Subordinate Contract Payments</b>	<b>\$ 4,058,356</b>	<b>\$ 4,058,292</b>	<b>\$ 4,133,868</b>	<b>\$ 4,054,490</b>	<b>\$ 3,982,714</b>
<b>Remaining Balance</b>	<b>\$ 6,616,859</b>	<b>\$ 367,495</b>	<b>\$ (88,537)<sup>(7)</sup></b>	<b>\$ 9,313,413</b>	<b>\$ 7,640,701</b>

<sup>(1)</sup> Includes CVP Contract Water and supplemental surface water.

<sup>(2)</sup> Reflects additional pumping and delivery costs associated with the purchase of a significant amount of supplemental water.

<sup>(3)</sup> Reflects capitalization of interest on the 2009 Notes through March 1, 2010. See the caption "Outstanding Obligations—Joint Powers Agencies Obligation."

<sup>(4)</sup> District payment obligation under Project Agreement with the Authority with respect to Tracy Pumping Plant Project. Fiscal Year 2009 amount represents net credit of monies held in funds and accounts with respect to this obligation upon final payment by District.

<sup>(5)</sup> Fiscal Year 2010 amount represents net credit of monies held in funds and accounts with respect to this obligation upon final payment by District.

<sup>(6)</sup> Equals Net Revenues divided by Total Contract Payments.

<sup>(7)</sup> Paid from District reserves.

Source: District.

Whoops: the circled figure in this

Westlands bond offering was fake, according to the SEC. Instead of bringing revenue up by raising rates to its users by 11.6%, which would have done the job, Westlands reclassified some of its cash holdings as revenue and moved some other money around. It did so, the SEC says, "solely" to meet the covenant.

What concerns the SEC is that the misstatement made it into the official offering for a \$77-million refunding bond issue in 2012. That misled buyers of those bonds into thinking that the district invariably collected enough money to cover its bonds, when the truth is it had fallen hugely short in 2010. That would have made a difference to many investors, who might have decided to stay away.

The implications of all this are serious. For one thing, it shows that Westlands management is willing to mislead investors simply to save money for its users. It raises the question of whether a district that behaves this way is a suitable partner for the federal government in other deals, including the huge litigation settlement last year that was negotiated in secret, and that amounted to a huge federal giveaway to the district. And it could affect a congressional debate over that settlement. It should.

The SEC action casts a shadow over \$200 million in bonds issued by Westlands and a neighboring district, which have been placed on negative credit watch by the rating agency Moody's. But the darkest shadow is cast over the cause of good governance. As long as senior officials can boast about doing "Enron accounting" and



then, when they're caught, get off without admitting their wrongdoing for the record, there's little hope that the public interest will be protected.

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env-trinity mailing list  
env-trinity@velocipede.dcn.davis.ca.us  
<http://www2.dcn.org/mailman/listinfo/env-trinity>

**To:** Bobbie Ormonde[bormonde@westlandswater.org]; kvierra@westlandswater.org[kvierra@westlandswater.org]  
**From:** Dave Ciapponi  
**Sent:** Tue 3/15/2016 12:23:44 PM  
**Subject:** FW: S&P Rating Letter & Report - CA, Westland's Water District  
[Westlands Water District STDLONG 797139.pdf](#)  
[Westlands Water District STDLONG A+ 797139.pdf](#)  
[Westlands Water District SPUR 797139.pdf](#)  
[CA, Westlands Wtr Dist Rationale 797139.pdf](#)

FYI

Sent from [Mail](#) for Windows 10

**From:** [S&P USPF RatingLetters@standardandpoors.com](#)  
**Sent:** Tuesday, March 15, 2016 3:33 AM  
**To:** [dciapponi@westlandswater.org](#)  
**Cc:** [Kawawaki, Lauren](#); [Weil, Chloe](#)  
**Subject:** S&P Rating Letter & Report - CA, Westland's Water District

Dear Mr. Ciapponi,

Please find attached the rating letter and report for the transaction reflected above.

Should you have any questions regarding the rating or contents of the report, please contact the primary analyst listed in the report. If you need any further assistance, please don't hesitate to contact Lauren Kawawaki at [lauren.kawawaki@standardandpoors.com](#) or 415-371-5014

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March 14, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Dave Ciapponi, Assistant General Manager

Re: *Westlands Water District, California, Certificate Of Participation*

Dear Mr. Ciapponi:

Standard & Poor's Ratings Services ("Ratings Services") hereby affirms its rating of "A+" for the underlying rating (SPUR) on the above-listed obligations and placed the rating on CreditWatch with negative implications. A copy of the rationale supporting the rating and CreditWatch is enclosed.

This letter constitutes Ratings Services' permission for you to disseminate the above rating to interested parties in accordance with applicable laws and regulations. However, permission for such dissemination (other than to professional advisors bound by appropriate confidentiality arrangements) will become effective only after we have released the rating on [standardandpoors.com](http://standardandpoors.com). Any dissemination on any Website by you or your agents shall include the full analysis for the rating, including any updates, where applicable.

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Sincerely yours,

A handwritten signature in black ink that reads "Standard & Poor's". The signature is written in a cursive, flowing style. The words "Standard" and "Poor's" are connected by an ampersand. The signature is set against a light green, textured background.

Standard & Poor's Ratings Services

jk  
enclosure



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## Summary:

San Luis & Delta-Mendota Water  
Authority, California  
Westlands Water District; Joint  
Criteria; Water/Sewer

### Primary Credit Analyst:

Chloe S Weil, San Francisco (1) 415-371-5026; [chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)

### Secondary Contact:

James M Breeding, Dallas (1) 214-871-1407; [james.breeding@standardandpoors.com](mailto:james.breeding@standardandpoors.com)

## Table Of Contents

Rationale

Related Criteria And Research



## Summary:

# San Luis & Delta-Mendota Water Authority, California

## Westlands Water District; Joint Criteria; Water/Sewer

Credit Profile		
WestlandsWtr Dist (WestlandsWtr Dist) JOINTCRIT		
LongTermRating	AAA/A-1/Watch Neg	Current
UnenhancedRating	A+(SPUR)/Watch Neg	On CreditWatch Negative
Westlands Wtr Dist wtr & swr		
UnenhancedRating	A+(SPUR)/Watch Neg	On CreditWatch Negative

## Rationale

Standard & Poor's Rating Services placed the following ratings on CreditWatch with negative implications:

- 'A+' long-term rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes; and
- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs).

The CreditWatch placements follow the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Securities Exchange Commission (SEC) with the district, which charged key management staff with misleading investors about the district's financial condition. Prior to the SEC's action, Standard & Poor's was not aware of the district's extraordinary accounting transactions that were the subject of the proceeding.

Resolution of the CreditWatch placement is dependent on our ability to obtain timely information of satisfactory quality to maintain our rating on the securities in accordance with our applicable criteria and policies. Failure to receive the requested information by March 25, 2016 will likely result in our suspension of the affected rating, preceded, in accordance with our policies, by any change to the rating that we consider appropriate given available information.

## Related Criteria And Research

### Related Criteria

USPFCriteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016

USPFCriteria: Methodology: Definitions And RelatedAnalytic PracticesFor CovenantAnd PaymentProvisionsIn  
U.S.Public FinanceRevenueObligations, Nov. 29, 2011

USPFCriteria: AssigningIssueCredit RatingsOf Operating Entities, May 20, 2015

Criteria: Use of CreditWatch And Outlooks, Sept. 14, 2009

Ratings Detail (As Of March 14, 2016)		
WestlandsWtr Dist wtr & swr (AGM)		
<i>Unenhanced</i> Rating	A+(SPUR)/Watch Neg	On CreditWatch Negative
Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced</i> Rating	A+(SPUR)/Watch Neg	On CreditWatch Negative
San Luis & Delta-Mendota Wtr Auth, California		
WestlandsWtr Dist, California		
SanLuis & Delta-Mendota Wtr Auth (WestlandsWtr Dist) (BAM)		
<i>Unenhanced</i> Rating	A+(SPUR)/Watch Neg	On CreditWatch Negative

Many issuesare enhancedby bond insurance.

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One California Street, 31st Floor  
San Francisco, CA 94111-5432  
tel 415 371-5000  
reference no.: 40098960

March 14, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Dave Ciapponi, Assistant General Manager

Re: *Westlands Water District, California, Certificate Of Participation*

Dear Mr. Ciapponi:

Standard & Poor's Ratings Services ("Ratings Services") hereby affirms its rating of "A+" for the above-referenced obligations and placed the rating on CreditWatch with negative implications. A copy of the rationale supporting the rating and CreditWatch is enclosed.

This letter constitutes Ratings Services' permission for you to disseminate the above rating to interested parties in accordance with applicable laws and regulations. However, permission for such dissemination (other than to professional advisors bound by appropriate confidentiality arrangements) will become effective only after we have released the rating on [standardandpoors.com](http://standardandpoors.com). Any dissemination on any Website by you or your agents shall include the full analysis for the rating, including any updates, where applicable.

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Please send hard copies to:  
Standard & Poor's Ratings Services  
Public Finance Department  
55 Water Street

New York, NY 10041-0003

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Ratings Services is pleased to have the opportunity to provide its rating opinion. For more information please visit our website at [www.standardandpoors.com](http://www.standardandpoors.com). If you have any questions, please contact us. Thank you for choosing Ratings Services.

Sincerely yours,

A handwritten signature in black ink that reads "Standard & Poor's". The signature is written in a cursive, flowing style. The words "Standard" and "Poor's" are connected, with an ampersand in between. The signature is set against a light green, textured background.

Standard & Poor's Ratings Services

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One California Street, 31st Floor  
San Francisco, CA 94111-5432  
tel 415 371-5000  
reference no.: 40225135

March 14, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Dave Ciapponi, Assistant General Manager

Re: *Westlands Water District, California, Joint Criteria*

Dear Mr. Ciapponi:

Standard & Poor's Ratings Services ("Ratings Services") hereby affirms its rating of "AAA/A-1" for the above-referenced obligations and placed the rating on CreditWatch with negative implications. A copy of the rationale supporting the rating and CreditWatch is enclosed.

This letter constitutes Ratings Services' permission for you to disseminate the above rating to interested parties in accordance with applicable laws and regulations. However, permission for such dissemination (other than to professional advisors bound by appropriate confidentiality arrangements) will become effective only after we have released the rating on [standardandpoors.com](http://standardandpoors.com). Any dissemination on any Website by you or your agents shall include the full analysis for the rating, including any updates, where applicable.

To maintain the rating, Standard & Poor's must receive all relevant financial and other information, including notice of material changes to financial and other information provided to us and in relevant documents, as soon as such information is available. Relevant financial and other information includes, but is not limited to, information about direct bank loans and debt and debt-like instruments issued to, or entered into with, financial institutions, insurance companies and/or other entities, whether or not disclosure of such information would be required under S.E.C. Rule 15c2-12. You understand that Ratings Services relies on you and your agents and advisors for the accuracy, timeliness and completeness of the information submitted in connection with the rating and the continued flow of material information as part of the surveillance process. Please send all information via electronic delivery to [pubfin\\_statelocalgovt@standardandpoors.com](mailto:pubfin_statelocalgovt@standardandpoors.com). If SEC rule 17g-5 is applicable, you may post such information on the appropriate website. For any information not available in electronic format or posted on the applicable website,

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Public Finance Department  
55 Water Street



New York, NY 10041-0003

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Sincerely yours,

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**To:** 'Jim Carter'[jcarter@westlandswater.org]; Jasdeep Singh[jsingh@westlandswater.org]  
**Cc:** 'Johnny Amaral'[jamaral@westlandswater.org]; 'Dan Pope'[dpope@westlandswater.org]  
**From:** Gayle Holman  
**Sent:** Wed 7/13/2016 2:50:34 AM  
**Subject:** Press Release and Supporting Doc to be Posted to the Website  
[Press Release.Fitch Removes WWDs Negative Watch Rating.FINAL.07.12.16.pdf](#)  
[Final release WWD\(CA\) July 2016.pdf](#)

Hi Jim/Jas:

Tomorrow morning, please post the following press release along with supporting pdf FitchRatings document to the website:

<http://wwd.ca.gov/news-and-reports/media-center/>

News Releases  
2016

07/12/2016 – Press Release

Fitch Removes Westlands' Negative Watch Rating

FitchRatings Document – July 2016 {This should be a hyperlink to the actual FitchRatings doc -  
<https://www.fitchratings.com/site/pressrelease?id=1008779>

I will be offsite for most of the morning, but will check email and advise if you have any questions.

Thank you,

Gayle

Gayle Holman  
Public Affairs Representative  
Westlands Water District  
3130 N. Fresno Street  
P.O. Box 6056  
Fresno, CA 93703-6056  
(559) 241-6233 (direct)  
[REDACTED] (cell)  
(559) 241-6277 (fax)  
[gholman@westlandswater.org](mailto:gholman@westlandswater.org)



## Westlands Water District

3130 N. Fresno Street, P.O. Box 6056, Fresno, California 93703-6056, (559) 224-1523, FAX (559) 241-6277

### **PRESS RELEASE**

July 12, 2016

### **For Immediate Release**

**Contact:** Gayle Holman  
(559) 241-6233  
Westlands Water District

## **Fitch Removes Westlands Water District's Negative Watch Rating**

**FRESNO, CA** – We are pleased with Fitch's decision to affirm the rating of AA- and remove the negative watch rating based on the actions the District has taken to insure proper reporting in the future. The revised rating follows similar action by Standard & Poor's Rating Services which also removed its CreditWatch rating and affirmed its 'A+' long-term rating for Westlands Water District.

As a result of its analysis, Fitch also issued a negative outlook rating over additional drainage responsibility that Westlands will be required to manage under the drainage settlement reached between Westlands Water District and the United States Government. Westlands Water District looks forward to the enactment of the drainage legislation pending in Congress and to working with farmers and the Department of Interior to implement a program that fulfills the obligations contained within the agreement.

###

FitchRatings document is below and available here:

<https://www.fitchratings.com/site/pressrelease?id=1008779>

## **FITCH REMOVES WESTLANDS WATER DISTRICT, CA WATER REVS FROM NEGATIVE WATCH; OUTLOOK TO NEGATIVE**

Fitch Ratings-Austin-12 July 2016: Fitch Ratings has affirmed the ratings on and removed from Ratings Watch Negative the following underlying ratings of the Westlands Water District, California (Westlands or the district):

--\$97.3 million revenue certificates of participation (COPs), series 2005A, 2007A, 2007B and 2008A, at 'AA-';

--\$22.1 million revenue COPs series 2008A (bank bonds) at 'AA-';

--\$74.2 million revenue refunding bonds series 2012A at 'AA-'.

In addition, Fitch has affirmed the ratings on and removed the Rating Watch Negative on the following San Luis & Delta Mendota Water Authority, CA (SLDMWA) bonds:

--\$29.8 million refunding revenue bonds (Delta Habitat Conservation and Conveyance Project), series 2013A, at 'AA-'.

The Rating Outlook is Negative.

### **KEY RATING DRIVERS**

**NEGATIVE WATCH REMOVED:** Fitch has removed the district's ratings from Negative Watch because it believes the actions taken by the Securities and Exchange Commission and the district mitigate the risk of future misrepresentations and omissions by the district relating to district financial results. Further, board adopted fixed-land based charges mitigate the risk of future revenue volatility.

**NEGATIVE OUTLOOK:** The Negative Rating Outlook is due to the potential for significant leveraging and additional drainage management responsibilities that would be assumed by the district following authorization of a drainage settlement (drainage settlement) with the United States. Authorization of the drainage settlement is pending U.S. Congressional approval.

**LARGEST WATER DISTRICT IN THE NATION:** Westlands is the largest water district by acreage in the nation, encompassing 614,700 acres in Fresno and Kings Counties in the San Joaquin Valley serving mostly agricultural irrigation needs. The district serves a highly concentrated agricultural user base that produces crops valued around \$1.5 billion annually.

**LOW ALLOCATIONS LEAD TO HIGHER COSTS:** Although the district has ample water entitlements [1.19 million acre feet (af) to serve regional irrigation need]), allocations of Central Valley Project (CVP) water can vary widely from year to year, driven by hydrology and environmental regulations. Unfavorably for the district, CVP allocations have been 5% or less annually since 2014, forcing the district to purchase more costly supplies elsewhere for its customers.

**SOUND FINANCIAL POSITION:** The district's financial position is generally stable following the adoption of fixed-rate land based charges in fiscal 2011. DSC on senior lien debt has been 1.6x

or higher since 2011. District cash balances have continued to climb, growing to over \$140 million for fiscal 2015, up from just \$40 million in fiscal 2010.

**WESTLANDS GUARANTY ON SLDMWA BONDS:** The rating on SLDMWA bonds reflects Westlands' obligation to pay 100% of debt service to the trustee. Westlands' is entitled to subsequent repayment from the other eight districts, which makes up about 20%, or approximate \$8 million, of the total obligation. SLDMWA obligation is paid as an operating expense by Westlands.

## **RATING SENSITIVITIES**

**ADDITIONAL LEVERAGE WITH DRAINAGE SETTLEMENT:** The rating would likely be downgraded if the U.S. Congress approves the drainage settlement with Westlands Water District due to significant debt likely to be required as part of the settlement, which could ultimately pressure the district's financial performance. If the drainage settlement agreement is not authorized, the Outlook would likely be moved to Stable based on the district's existing credit profile.

**LEVERAGE ON BEHALF OTHERS:** Additional debt taken on by the district on behalf of other agencies, such as the San Luis & Delta Mendota Water Authority, could further pressure district finances and lead to a rating downgrade.

## **CREDIT PROFILE**

### **RATING WATCH NEGATIVE REMOVED**

Following further discussions with the district, Fitch believes that the accounting reclassifications utilized in fiscal 2010 to meet the 1.25x rate covenant were isolated to that reporting period. Additionally, the board's adoption of a formal written policy for disclosure procedures coupled with the staff training related to disclosure procedures and responsibilities required under federal law are indicative of the district board and management's undertaking to provide more transparent financial disclosure going forward. Removal of the Rating Watch Negative is further supported by Fitch's belief that the adoption of fixed-rate land based charges starting in fiscal year 2011 help to mitigate the risk of future revenue volatility resulting from reduced CVP water allocations.

### **DRAINAGE SETTLEMENT COULD PRESSURE DISTRICT**

In September of 2015 the district entered into a settlement with the U.S. to resolve decades of litigation surrounding drainage issues within the district brought on by the district and various district landowners. The settlement, which has been signed by the U.S. and the district, still requires Congressional authorization. Fitch views favorably the district's receipt of a permanent water contract (albeit with a reduced delivery entitlement) and relief from \$295 million (present value) in obligations to the U.S. However, Fitch is concerned with the additional responsibilities taken on by the district for drainage management and the related costs and liability that could be incurred.

Low end estimates of costs associated with the drainage settlement are approximately \$400 million, which is double the current debt outstanding of the district and its obligation to repay bonds on behalf of the SLDMWA. High end estimates are closer to \$800 million, or four times the district's current outstanding obligations. The district is also required to permanently retire 100,000 acres of land (reducing the irrigable acreage by 17%) and compensate farmers in drainage affected parts of the district. The district currently owns about 90,000 acres of land and would look purchase or obtain non-irrigation covenants on the additional 10,000 acres. The district has about \$50 million set aside in a land and water reserve fund which could be used to offset the costs

related to the immediate implementation of some of the drainage settlement requirements, but would likely have to debt finance additional costs associated with completing the requirements.

## LARGE, UNIQUE IRRIGATION DISTRICT

Westlands is governed by a nine-member board of directors elected from district land owners and is responsible for district governance and policies. The district maintains full independent rate-setting authority as well as the ability to place a lien on property if water bills are unpaid. The district covers 614,700 acres in Fresno and Kings County on the west side of the San Joaquin Valley of which about 568,000 is irrigable. It is the largest irrigation district in the U.S. by acreage and responsible for administering the delivery of water from the United States Bureau of Reclamation (USBR) CVP.

## CONCENTRATION OF AGRICULTURAL CUSTOMERS

The district serves a small concentrated customer base comprised of approximately 700 connections for agricultural irrigation service and another 200 municipal and industrial connections. Irrigation water sales accounted for 80% of the district's operating revenues, land based charges 17% and municipal and industrial revenues accounted for just over 2% of operating revenues in fiscal 2015. Offsetting the ratepayer concentration risk somewhat is the high value of the cash crops farmed in the district (about \$2 billion in calendar 2015).

## 2015 FINANCIAL RESULTS BOOSTED BY LAND SALES

Financial results for fiscal 2015 were strong, boosted by \$22 million in additional non-operating revenues from the sale of land. Senior lien and all-in DSC, including land sale proceeds were 3.6x and 2.6x, respectively. Without the land sale proceeds, DSC would have still been healthy at 2.1x and 1.7x, respectively. The district budgets to achieve 1.25x DSC on senior lien debt and its rates are designed to cover the cost of water plus some operational expenses of the district. Management provided forecasts project senior lien DSC of 2.3x in fiscal 2016 supported by an additional \$6 million in land sales, before dropping to 1.4x for fiscals 2017 - 2020. Forecasts assume rates based on 0% CVP water allocations.

District cash continued an upward trend. Cash balances registered \$140 million in fiscal year 2015, up sharply from \$40 million in fiscal year 2010. Cash balances would likely decline somewhat when the drainage settlement is authorized as the district indicated utilizing some reserves to complete drainage settlement requirements.

## LOW CVP ALLOCATIONS RESULT IN HIGHER COST

District water is purchased from the USBR's CVP project and sold to users at prices designed to cover cost. CVP allocations have been minimal the last several years, with with 0% CVP allocation in 2014 and 2015 and just 5% in 2016. When allocations are low the district is forced to purchase supplemental water on the open market which can be costly.

Contact:

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#### Applicable Criteria

Revenue-Supported Rating Criteria (pub. 16 Jun 2014)

[https://www.fitchratings.com/creditdesk/reports/report\\_frame.cfm?rpt\\_id=750012](https://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=750012)

U.S. Water and Sewer Revenue Bond Rating Criteria (pub. 03 Sep 2015)

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**To:** Bobbie Ormonde[bormonde@westlandswater.org]  
**Cc:** dpope@westlandswater.org[dpope@westlandswater.org]; 'Tom Birmingham'[tbirmingham@westlandswater.org]; Andrew Ward[andrew.ward@fitchratings.com]; Houston, David[david.houston@citi.com]  
**From:** Teri Wenck  
**Sent:** Tue 7/12/2016 7:00:48 PM  
**Subject:** RE: Confidential: Notification of Fitch Rating Decision - Westlands Water District (CA)  
[Final release WWD\(CA\) July 2016.pdf](#)

Bobbie,

Attached is the final published press release.

Teri F. Wenck, CPA  
Director

-----  
FitchRatings  
111 Congress Ave., Ste 2010  
Austin, TX 78701  
p: 512-215-3742  
f:512-813-5620  
teri.wenck@fitchratings.com

-----Original Message-----

From: Bobbie Ormonde [mailto:bormonde@westlandswater.org]  
Sent: Tuesday, July 12, 2016 10:11 AM  
To: Teri Wenck <teri.wenck@fitchratings.com>  
Cc: dpope@westlandswater.org; 'Tom Birmingham' <tbirmingham@westlandswater.org>; Andrew Ward <andrew.ward@fitchratings.com>; Houston, David <david.houston@citi.com>  
Subject: RE: Confidential: Notification of Fitch Rating Decision - Westlands Water District (CA)

Teri and Andrew,

Please use the following conference line for our 10:30 a.m. PST conference call this morning.

Conference Line Number 800-820-4690  
Pass Code 587763

Look forward to speaking with you.

Bobbie Ormonde  
Director of Finance and Administration  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 93703  
(559) 241-6203

-----Original Message-----

From: Teri Wenck [mailto:teri.wenck@fitchratings.com]  
Sent: Tuesday, July 12, 2016 6:43 AM  
To: Bobbie Ormonde

Cc: dpope@westlandswater.org; Tom Birmingham; Andrew Ward  
Subject: RE: Confidential: Notification of Fitch Rating Decision - Westlands Water District (CA)

I think the 10:30 will work.  
Thanks

Teri F. Wenck, CPA  
Director

-----  
FitchRatings  
111 Congress Ave., Ste 2010  
Austin, TX 78701  
p: 512-215-3742  
f: 512-813-5620  
teri.wenck@fitchratings.com

-----Original Message-----

From: Bobbie Ormonde [mailto:bormonde@westlandswater.org]  
Sent: Tuesday, July 12, 2016 8:40 AM  
To: Teri Wenck <teri.wenck@fitchratings.com>  
Cc: dpope@westlandswater.org; Tom Birmingham <tbirmingham@westlandswater.org>; Andrew Ward <andrew.ward@fitchratings.com>  
Subject: Re: Confidential: Notification of Fitch Rating Decision - Westlands Water District (CA)

Teri,  
We can push the meeting to 11:00 PST if that works.

Sent from my iPhone

On Jul 12, 2016, at 6:37 AM, "Teri Wenck" <teri.wenck@fitchratings.com> wrote:

> Thanks. Please include Andrew Ward also. I'm not sure if he is available at the 10:30am time, but if he is free I would like him to call in as well.

>

> Teri F. Wenck, CPA

> Director

> -----

> FitchRatings

> 111 Congress Ave., Ste 2010

> Austin, TX 78701

> p: 512-215-3742

> f: 512-813-5620

> teri.wenck@fitchratings.com

>

>

> -----Original Message-----

> From: Bobbie Ormonde [mailto:bormonde@westlandswater.org]

> Sent: Tuesday, July 12, 2016 8:36 AM

> To: Teri Wenck <teri.wenck@fitchratings.com>

> Cc: dpope@westlandswater.org; Tom Birmingham

> <tbirmingham@westlandswater.org>

> Subject: Re: Confidential: Notification of Fitch Rating Decision -

> Westlands Water District (CA)

>

> Teri,

> A 10:30 a.m. meeting works for the District. I will provide a call in number when I arrive at the office.  
Thank you.

>

> Sent from my iPhone

>

> On Jul 12, 2016, at 6:31 AM, "Teri Wenck" <teri.wenck@fitchratings.com> wrote:

>

>> I have a meeting from 9am to 10 am, but I will be available after that to discuss the drainage settlement.

>> Teri F. Wenck, CPA

>> Director

>> -----

>> FitchRatings

>> 111 Congress Ave., Ste 2010

>> Austin, TX 78701

>> p: 512-215-3742

>> f:512-813-5620

>> teri.wenck@fitchratings.com

>>

>> -----Original Message-----

>> From: Bobbie Ormonde [mailto:bormonde@westlandswater.org]

>> Sent: Monday, July 11, 2016 7:23 PM

>> To: Teri Wenck <teri.wenck@fitchratings.com>

>> Cc: dpope@westlandswater.org; Tom Birmingham

>> <tbirmingham@westlandswater.org>

>> Subject: FW: Confidential: Notification of Fitch Rating Decision -

>> Westlands Water District (CA)

>>

>> Teri,

>>

>> Our team has reviewed the draft commentary announcing the District's rating. Are you available tomorrow morning at 9:00 a.m. or 10:30 a.m. PST to discuss the facts in the Drainage Settlement section?

>>

>> Bobbie Ormonde

>> Director of Finance and Administration Westlands Water District

>> 3130 N. Fresno Street

>> Fresno, CA 93703

>> (559) 241-6203

>>

>>

>>

>>

>>

>> -----Original Message-----

>> From: Bobbie Ormonde [mailto:bormonde@westlandswater.org]

>> Sent: Monday, July 11, 2016 4:22 PM

>> To: 'teri.wenck@fitchratings.com'; 'dpope@westlandswater.org'

>> Cc: 'douglas.scott@fitchratings.com'

>> Subject: RE: Confidential: Notification of Fitch Rating Decision -

>> Westlands Water District (CA)

>>

>> Teri,

>>

>> We will provide our comments tomorrow morning.

>>

>> Bobbie Ormonde

>> Director of Finance and Administration Westlands Water District  
>> 3130 N. Fresno Street  
>> Fresno, CA 93703  
>> (559) 241-6203

>>  
>>  
>>

>> -----Original Message-----

>> From: [teri.wenck@fitchratings.com](mailto:teri.wenck@fitchratings.com)  
>> [mailto:[teri.wenck@fitchratings.com](mailto:teri.wenck@fitchratings.com)]  
>> Sent: Monday, July 11, 2016 2:15 PM  
>> To: [bormonde@westlandswater.org](mailto:bormonde@westlandswater.org); [dpope@westlandswater.org](mailto:dpope@westlandswater.org)  
>> Cc: [teri.wenck@fitchratings.com](mailto:teri.wenck@fitchratings.com); [douglas.scott@fitchratings.com](mailto:douglas.scott@fitchratings.com);  
>> [teri.wenck@fitchratings.com](mailto:teri.wenck@fitchratings.com)  
>> Subject: Confidential: Notification of Fitch Rating Decision -  
>> Westlands Water District (CA)

>>

>> Hi Bobbie and Dan,

>>

>> Attached is a draft of our commentary announcing our rating action(s) and accompanying rationale. Kindly review it for factual errors and the presence of confidential information and reply to me by email by 3 pm central/1 pm pacific, Tuesday July 12, 2016, so that we can consider your response before we publish.

>>

>> If we do not receive feedback, we will assume that there are no factual errors or confidential information, and the commentary will be released.

>>

>> Please be aware that all information contained in the attached draft rating action commentary ("Draft") is confidential and may constitute inside information under applicable law and securities regulations until published by Fitch. It is your responsibility to ensure that the Draft is neither used by, nor disclosed to any person in contravention of applicable laws and securities regulations.

>>

>>

>> Regards,

>>

>> Teri Wenck

>> Director

>> +1 (512) 215-3742

>> [teri.wenck@fitchratings.com](mailto:teri.wenck@fitchratings.com)

>>

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## **FITCH REMOVES WESTLANDS WATER DISTRICT, CA WATER REVS FROM NEGATIVE WATCH; OUTLOOK TO NEGATIVE**

Fitch Ratings-Austin-12 July 2016: Fitch Ratings has affirmed the ratings on and removed from Ratings Watch Negative the following underlying ratings of the Westlands Water District, California (Westlands or the district):

--\$97.3 million revenue certificates of participation (COPs), series 2005A, 2007A, 2007B and 2008A, at 'AA-';

--\$22.1 million revenue COPs series 2008A (bank bonds) at 'AA-';

--\$74.2 million revenue refunding bonds series 2012A at 'AA-'.

In addition, Fitch has affirmed the ratings on and removed the Rating Watch Negative on the following San Luis & Delta Mendota Water Authority, CA (SLDMWA) bonds:

--\$29.8 million refunding revenue bonds (Delta Habitat Conservation and Conveyance Project), series 2013A, at 'AA-'.

The Rating Outlook is Negative.

### **KEY RATING DRIVERS**

**NEGATIVE WATCH REMOVED:** Fitch has removed the district's ratings from Negative Watch because it believes the actions taken by the Securities and Exchange Commission and the district mitigate the risk of future misrepresentations and omissions by the district relating to district financial results. Further, board adopted fixed-land based charges mitigate the risk of future revenue volatility.

**NEGATIVE OUTLOOK:** The Negative Rating Outlook is due to the potential for significant leveraging and additional drainage management responsibilities that would be assumed by the district following authorization of a drainage settlement (drainage settlement) with the United States. Authorization of the drainage settlement is pending U.S. Congressional approval.

**LARGEST WATER DISTRICT IN THE NATION:** Westlands is the largest water district by acreage in the nation, encompassing 614,700 acres in Fresno and Kings Counties in the San Joaquin Valley serving mostly agricultural irrigation needs. The district serves a highly concentrated agricultural user base that produces crops valued around \$1.5 billion annually.

**LOW ALLOCATIONS LEAD TO HIGHER COSTS:** Although the district has ample water entitlements [1.19 million acre feet (af) to serve regional irrigation need]), allocations of Central Valley Project (CVP) water can vary widely from year to year, driven by hydrology and environmental regulations. Unfavorably for the district, CVP allocations have been 5% or less annually since 2014, forcing the district to purchase more costly supplies elsewhere for its customers.

**SOUND FINANCIAL POSITION:** The district's financial position is generally stable following the adoption of fixed-rate land based charges in fiscal 2011. DSC on senior lien debt has been 1.6x

or higher since 2011. District cash balances have continued to climb, growing to over \$140 million for fiscal 2015, up from just \$40 million in fiscal 2010.

**WESTLANDS GUARANTY ON SLDMWA BONDS:** The rating on SLDMWA bonds reflects Westlands' obligation to pay 100% of debt service to the trustee. Westlands' is entitled to subsequent repayment from the other eight districts, which makes up about 20%, or approximate \$8 million, of the total obligation. SLDMWA obligation is paid as an operating expense by Westlands.

## **RATING SENSITIVITIES**

**ADDITIONAL LEVERAGE WITH DRAINAGE SETTLEMENT:** The rating would likely be downgraded if the U.S. Congress approves the drainage settlement with Westlands Water District due to significant debt likely to be required as part of the settlement, which could ultimately pressure the district's financial performance. If the drainage settlement agreement is not authorized, the Outlook would likely be moved to Stable based on the district's existing credit profile.

**LEVERAGE ON BEHALF OTHERS:** Additional debt taken on by the district on behalf of other agencies, such as the San Luis & Delta Mendota Water Authority, could further pressure district finances and lead to a rating downgrade.

## **CREDIT PROFILE**

### **RATING WATCH NEGATIVE REMOVED**

Following further discussions with the district, Fitch believes that the accounting reclassifications utilized in fiscal 2010 to meet the 1.25x rate covenant were isolated to that reporting period. Additionally, the board's adoption of a formal written policy for disclosure procedures coupled with the staff training related to disclosure procedures and responsibilities required under federal law are indicative of the district board and management's undertaking to provide more transparent financial disclosure going forward. Removal of the Rating Watch Negative is further supported by Fitch's belief that the adoption of fixed-rate land based charges starting in fiscal year 2011 help to mitigate the risk of future revenue volatility resulting from reduced CVP water allocations.

### **DRAINAGE SETTLEMENT COULD PRESSURE DISTRICT**

In September of 2015 the district entered into a settlement with the U.S. to resolve decades of litigation surrounding drainage issues within the district brought on by the district and various district landowners. The settlement, which has been signed by the U.S. and the district, still requires Congressional authorization. Fitch views favorably the district's receipt of a permanent water contract (albeit with a reduced delivery entitlement) and relief from \$295 million (present value) in obligations to the U.S. However, Fitch is concerned with the additional responsibilities taken on by the district for drainage management and the related costs and liability that could be incurred.

Low end estimates of costs associated with the drainage settlement are approximately \$400 million, which is double the current debt outstanding of the district and its obligation to repay bonds on behalf of the SLDMWA. High end estimates are closer to \$800 million, or four times the district's current outstanding obligations. The district is also required to permanently retire 100,000 acres of land (reducing the irrigable acreage by 17%) and compensate farmers in drainage affected parts of the district. The district currently owns about 90,000 acres of land and would look purchase or obtain non-irrigation covenants on the additional 10,000 acres. The district has about \$50 million set aside in a land and water reserve fund which could be used to offset the costs

related to the immediate implementation of some of the drainage settlement requirements, but would likely have to debt finance additional costs associated with completing the requirements.

## LARGE, UNIQUE IRRIGATION DISTRICT

Westlands is governed by a nine-member board of directors elected from district land owners and is responsible for district governance and policies. The district maintains full independent rate-setting authority as well as the ability to place a lien on property if water bills are unpaid. The district covers 614,700 acres in Fresno and Kings County on the west side of the San Joaquin Valley of which about 568,000 is irrigable. It is the largest irrigation district in the U.S. by acreage and responsible for administering the delivery of water from the United States Bureau of Reclamation (USBR) CVP.

## CONCENTRATION OF AGRICULTURAL CUSTOMERS

The district serves a small concentrated customer base comprised of approximately 700 connections for agricultural irrigation service and another 200 municipal and industrial connections. Irrigation water sales accounted for 80% of the district's operating revenues, land based charges 17% and municipal and industrial revenues accounted for just over 2% of operating revenues in fiscal 2015. Offsetting the ratepayer concentration risk somewhat is the high value of the cash crops farmed in the district (about \$2 billion in calendar 2015).

## 2015 FINANCIAL RESULTS BOOSTED BY LAND SALES

Financial results for fiscal 2015 were strong, boosted by \$22 million in additional non-operating revenues from the sale of land. Senior lien and all-in DSC, including land sale proceeds were 3.6x and 2.6x, respectively. Without the land sale proceeds, DSC would have still been healthy at 2.1x and 1.7x, respectively. The district budgets to achieve 1.25x DSC on senior lien debt and its rates are designed to cover the cost of water plus some operational expenses of the district. Management provided forecasts project senior lien DSC of 2.3x in fiscal 2016 supported by an additional \$6 million in land sales, before dropping to 1.4x for fiscals 2017 - 2020. Forecasts assume rates based on 0% CVP water allocations.

District cash continued an upward trend. Cash balances registered \$140 million in fiscal year 2015, up sharply from \$40 million in fiscal year 2010. Cash balances would likely decline somewhat when the drainage settlement is authorized as the district indicated utilizing some reserves to complete drainage settlement requirements.

## LOW CVP ALLOCATIONS RESULT IN HIGHER COST

District water is purchased from the USBR's CVP project and sold to users at prices designed to cover cost. CVP allocations have been minimal the last several years, with with 0% CVP allocation in 2014 and 2015 and just 5% in 2016. When allocations are low the district is forced to purchase supplemental water on the open market which can be costly.

Contact:

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Media Relations: Elizabeth Fogerty, New York, Tel: +1 (212) 908 0526, Email:  
elizabeth.fogerty@fitchratings.com.

Additional information is available at 'www.fitchratings.com'.

#### Applicable Criteria

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U.S. Water and Sewer Revenue Bond Rating Criteria (pub. 03 Sep 2015)

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**To:** 'Dan Pope'[dpope@westlandswater.org]; Tom Birmingham[tbirmingham@westlandswater.org]; 'Brown, Douglas S.'[DBROWN@SYCR.com]  
**Cc:** Houston, David[david.houston@citi.com]  
**From:** Bobbie Ormonde  
**Sent:** Fri 3/11/2016 4:37:49 PM  
**Subject:** FW: S&P Review of Westlands Water District  
[Series 2013 San Luis Westlands Water District - S&P Rating Report.pdf](#)  
[Standard and Poors Revised Water Sewer Criteria Jan 19 2016.pdf](#)  
[S&P Pre-Mtg Memo Westlands Water District.pdf](#)

Tom,

Staff is in the process of gathering the data and updates requested by S & P. S & P is requesting to meet in person or by phone on March 18 or March 21. Please provide your availability, or we can discuss availability of the team today at 1:00 p.m. Please advise.

Bobbie Ormonde  
Director of Finance and Administration  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 93703  
(559) 241-6203

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**From:** Weil, Chloe [mailto:chloe.weil@standardandpoors.com]  
**Sent:** Thursday, March 10, 2016 6:23 PM  
**To:** Brown, Douglas S.; Bobbie Ormonde  
**Cc:** Dyson, Paul  
**Subject:** S&P Review of Westlands Water District  
**Importance:** High

Good evening Bobbie –

As I previously indicated, we will be working on a full review of the rating on the District's revenue bonds as a result of yesterday's SEC enforcement action. We last conducted a full review of the District in relation to the May 2013 issuance by the San Luis & Delta–Mendota Water Authority of the series 2013A bonds.

I am attaching our rating report from 2013 as a point of reference, and I am sending an attached list of key questions for your consideration to help expedite our credit review. As you can see, the bulk of our questions relate to the accounting treatment of the adjustments made in 2010 and 2012, and making sure we understand each of the revenue items in the fiscal 2015 audit – but we are also focused on the District's financial projections over the next five years.

We are hoping to schedule a meeting with the District (either in person or by phone) on March 18<sup>th</sup> or 21<sup>st</sup> to give us enough time to finalize the rating by March 25<sup>th</sup>. We will wait to hear from you for which date works best for the District.

Finally, I am also including a copy of our new water/sewer criteria that we released in January.

Regards,

Chloe



Chloe Weil

Director, U.S. Public Finance Infrastructure Group

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**From:** Brown, Douglas S. [<mailto:DBROWN@SYCR.com>]

**Sent:** Thursday, March 10, 2016 1:01 PM

**To:** Weil, Chloe (Analytical)

**Cc:** Bobbie Ormonde

**Subject:** WWD

Chloe,

Per our conversation:

Bobbie Ormonde  
District Director of Finance & Administration  
[bormonde@westlandswater.org](mailto:bormonde@westlandswater.org)  
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**Douglas S. Brown**  
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## Summary:

San Luis & Delta-Mendota Water  
Authority, California  
Westlands Water District; Joint  
Criteria; Water/Sewer

### Primary Credit Analyst:

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### Secondary Contact:

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## Summary:

# San Luis & Delta-Mendota Water Authority, California

## Westlands Water District; Joint Criteria; Water/Sewer

Credit Profile		
US\$40.87mil rfdg rev bnds (WestlandsWtr Dist) ser 2013A due 03/01/2043		
LongTermRating	A+/Stable	New
Westlands Wtr Dist wtr & swr		
UnenhancedRating	A+(SPUR)/Stable	Affirmed

## Rationale

Standard & Poor's Ratings Services assigned its 'A+' long-term rating to San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds (DHCCP Development Project). At the same time, we affirmed our 'A+' long-term rating on the authority's series 2009A revenue notes and our 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s revenue bonds and certificates of participation (COPs). The outlook on all ratings is stable.

We also affirmed our 'AAA/A-1+' rating on the district's series 2008A adjustable-rate refunding revenue COPs. The long-term component of the rating reflects the combination of the district's creditworthiness and credit enhancement in the form of a letter of credit (LOC) provided by Rabobank N.A. (not rated) and a confirming LOC provided by Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (Rabobank Nederland), New York Branch (AA-/Stable/A-1+). This rating is based on Standard & Poor's joint criteria assuming a low credit correlation between the obligor and the LOC providers. Furthermore, the short-term component of the rating is based on the liquidity support provided by the LOCs.

The ratings reflect our view of the district's:

- Large and agriculturally diverse service area;
- Rate structure that collects half of the district's operations and maintenance (O&M) expenses through water rates and half through land-based charges, which enhances revenue stability;
- Debt service coverage (DSC) that is projected to range from adequate to good during the next four fiscal years; and
- Strong cash reserves.

In our view, these strengths are partially offset by the district's:

- Dependence on volatile water allocations from the U.S. Bureau of Reclamation's (USBR) Central Valley Project (CVP),

- Anticipated need for significant additional leverage to finance its share of upcoming projects related to the Delta Habitat Conservation and Conveyance Project (DHCCP),
- Small agricultural customer base of 700 customers over which to spread fixed costs, and
- Adequate total DSC when taking into consideration the district's subordinate 1965 contract payments to USBR.

We understand that the 2013A bonds are being issued to refund a portion of the authority's 2009A revenue notes.

We view the bond provisions as adequate. The bonds are secured by authority revenues, which consist of payments under activity agreements by the member agencies participating in the financing. However, we understand that Westlands Water District is obligated under its activity agreement to pay 100% of principal and interest when due, and that the district is reimbursed from authority revenues as participating member agencies make payments to the authority. Therefore, our analysis focuses solely on the district although the district's allocable share of the 2013A bonds' debt service is about 82%. The district's activity agreement payments are treated as a district operating expense, and the payments are senior in priority to the district's obligations with respect to its bonds and COPs. We understand that a debt service reserve is expected to be funded from bond proceeds and provide additional liquidity for the 2013A bonds.

The district was formed in 1952 under the California Water District Law to furnish irrigation water and drainage service to farmers within the district's boundaries. Located on the west side of the San Joaquin Valley, the district's service area spans 614,700 acres of level agricultural land in Fresno and Kings counties, 568,500 acres of which are irrigable. The overall customer base is small, at about 700 water users, and consists of larger farms that average 800 to 900 acres in size. These farms produce 60 different crops including cotton, tomatoes, pistachios, cantaloupes, lettuce, almonds, and onions. Permanent crops accounted for about 18% of total irrigable acreage and 30% of crop value in calendar year 2011, the most recent year for which data are available. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district. We consider the customer base to be very diverse based on the leading 10 customers paying about 10.4% of total operating revenues, and no customer paying more than about 3.5% of total operating revenues. The district operates and maintains a very water-efficient underground piped distribution system through which all deliveries to water users are measured by reading flow meters twice a month.

The district's primary water source is surface water supplied through the USBR's CVP. The initial 1963 contract between the district and USBR specified a 900,000 acre-feet contract water entitlement that was subsequently increased to 1.15 million acre-feet. The agreement expired at the end of 2007, and the district and USBR entered into an Interim Renewal Contract (IRC) that has been twice extended to the current termination date on Feb. 28, 2014. Before entering into a new long-term agreement, USBR is required to complete certain environmental reviews, and district management does not believe that these environmental reviews will likely be completed prior to the current IRC expiration date. Management has requested a renewal of the IRC and anticipates that it will be renewed again under substantially the same terms and conditions prior to the current expiration date. The district's total water demand exceeds its CVP contract water entitlement, and additional water supply is provided through supplemental water purchases and groundwater pumping. Due to significant variations in California hydrology, CVP allocations have varied widely, ranging from 10% to 100% of contract entitlement, and the allocation for fiscal year 2014 is currently 20%.

Operating revenues are generated through water sales and acreage charges. We understand that the district's water rates are set annually to pass through all water purchase costs and also recover half of the district's O&M costs. The balance of O&M costs are recovered through acreage charges. We view this structure as prudent given the significant variation in water sales and the volatility of CVP water allocations. Payment for water and power is due monthly by the 25th day following the month end of use, and no further water deliveries are made if payments are not received when due. If monthly payments are not made, amounts due may be added to the annual acreage charges. Water rates may be changed midyear if the water supply situation changes after the start of the fiscal year, which runs from March to February. Rate changes are subject to Proposition 218, but management reports that the district has historically faced minimal resistance to rate changes from land owners -- the most significant protest was a mere 2% of the eligible votes by acreage.

We understand that there are significant potential capital expenses related to the Bay Delta Conservation Plan and the DHCCP although there are no significant capital needs within the district at this time. A record of decision is anticipated in early 2014, after which Phase I of the DHCCP may proceed with design and engineering work that is estimated to cost about \$1.8 billion. Construction of the project (Phase II) is scheduled to commence in 2017 and continue over a 10-year period at an estimated cost of \$13.0 billion. Management currently anticipates participating in Phase I of the DHCCP, although a decision has not yet been made and management continues to monitor project planning and development. If the district decides to participate in Phase I, we understand that financing arrangements may be considered as early as 2014. We understand that the cost of the project will be shared between the state participants and the federal participants, and that the district's share of the federal portion is estimated to be about 25%.

The district's financial performance has been predominantly strong since 1993, in our view, but financial performance is subject to thinner margins during drought years. For example, in fiscal year 2010 the CVP allocation was just 10% of water contract entitlements, and coverage of the district's activity agreement payments and senior debt obligations was good, in our view, at 1.25x. At the same time, the district's total DSC, which includes subordinate contract capital repayments to USBR, narrowed to just 1.0x, which we consider marginally adequate. The district's financial performance improved the following year driven primarily by increased water availability due to wet weather. In fiscal years 2011 and 2012, coverage of activity agreement payments and senior debt obligations was 1.69x and 1.59x, respectively, while total DSC was 1.38x and 1.31x, respectively. Based on unaudited fiscal year 2013 results, we calculate coverage of activity agreement payments and senior debt obligations of 1.32x and total DSC of 1.08x. Weaker performance for the year was driven primarily by lower water sales. During the next four fiscal years, based on management's projections that assume a 40% allocation of the district's contract water entitlement, we calculate coverage of activity agreement payments ranging from 5.44x to 9.06x, while coverage of both activity agreement payments and senior debt obligations ranges from 1.22x, which we consider adequate, to 1.40x, which we consider good. During the same period, we calculate total DSC ranging from 1.02x to 1.15x, both of which we consider adequate.

The district is also a party to a LIBOR-based interest rate swap agreement with a notional amount of \$25.5 million and a mark-to-market value of negative \$3.6 million as of Feb. 28, 2013. The swap agreement was initially entered into in conjunction with the issuance of the 2005 BCOPs with the intent to synthetically fix the interest rate on those

certificates. The 2005B COPs were subsequently refunded with the 2008A COPs, and the interest rate swap is now associated with the 2008A COPs.

The district's liquidity position is strong, in our view. The district's cash and cash equivalents at the end of fiscal year 2012 was \$69.9 million, which represented 222 days of operating expenses; however, we understand that a portion of this balance is restricted and that the unrestricted portion was \$45.6 million, or 145 days, which we also consider strong. Based on unaudited results, management reports cash and cash equivalents at the end of fiscal year 2013 increased to about \$90.9 million, and management attributes the change in cash position primarily to increased prepayments by water users (\$7 million) and deferred revenue for supplemental water (\$7 million). We understand that the district maintains a strong liquidity position in part to enable it to opportunistically acquire water rights or otherwise firm up its water supply.

## Outlook

The stable outlook reflects our view of the district's role as the sole provider of supplemental water to a very large agricultural area that lacks adequate local water supply to meet demand. During the two-year outlook period, we anticipate that a record of decision will be entered regarding the DHCCP, and that financing arrangements related to Phase II of the DHCCP will be finalized. We could lower the rating if increased leverage is not balanced by rate increases that are adequate to maintain existing margins and financial performance, or if liquidity is significantly drawn down as a financing source. We could raise the rating if the district operates with significantly wider margins on a sustained basis or is able to materially enhance water supply stability.

## Related Criteria And Research

- USPFCriteria: Key Water And Sewer Utility Credit Ratio Ranges, Sept. 15, 2008
- USPFCriteria: Standard & Poor's Revises Criteria For Rating Water, Sewer, And Drainage Utility Revenue Bonds, Sept. 15, 2008
- U.S. State And Local Government Credit Conditions Forecast, April 4, 2013

Ratings Detail (As Of May 17, 2013)		
Westlands Wtr Dist adj rate rfdg rev COPs ser 2008A		
Long Term Rating	AAA/A-1+	Affirmed, Removed from Credit Watch
Unenhanced Rating	A+(SPUR)/Stable	Affirmed
Westlands Wtr Dist wtr & swr (AGM)		
Unenhanced Rating	A+(SPUR)/Stable	Affirmed
Westlands Wtr Dist Wtr & Swr rev certs of part		
Unenhanced Rating	A+(SPUR)/Stable	Affirmed
San Luis & Delta-Mendota Wtr Auth, California		
Westlands Wtr Dist, California		
San Luis & Delta-Mendota Wtr Auth (Westlands Wtr Dist) rev nts (Dhccp Dev Proj) ser 2009A		
Long Term Rating	A+/Stable	Affirmed

**Ratings Detail (As Of May 17, 2013) (cont.)**

Many issues are enhanced by bond insurance.

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## Criteria | Governments | U.S. Public Finance: U.S. Public Finance Waterworks, Sanitary Sewer, And Drainage Utility Systems: Rating Methodology And Assumptions

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## Criteria I Governments I U.S. Public Finance:

# U.S. Public Finance Waterworks, Sanitary Sewer, And Drainage Utility Systems: Rating Methodology And Assumptions

1. Standard & Poor's Ratings Services is updating its methodology for assigning issue credit ratings, issuer credit ratings (ICRs), and ratings derived from stand-alone credit profiles (SACPs) based on waterworks, sanitary sewer, and drainage utility revenue pledges of local and regional governments (LRGs) and irrigation districts in the U.S. This follows the publication of "Request for Comment: U.S. Public Finance Waterworks, Sanitary Sewer, And Drainage Utility Systems: Methodology And Assumptions", on Dec. 10, 2014. These criteria supersede the following articles:
  - Standard & Poor's Revises Criteria For Rating Water, Sewer, And Drainage Utility Revenue Bonds (Sept. 15, 2008);
  - Key Water And Sewer Utility Credit Ratio Ranges (Sept. 15, 2008); and
  - Water And Sewer Ratings (June 25, 2007).
2. This article is related to our criteria article "Principles Of Credit Ratings", published on Feb. 16, 2011.
3. This update provides additional transparency and comparability to help market participants better understand our approach in assigning ratings to U.S. public finance waterworks, sanitary sewer, and drainage utility systems, to enhance the forward-looking nature of these ratings, and to enhance the global comparability of our ratings through a clear, comprehensive, and globally consistent criteria framework.
4. All terms followed by an asterisk (\*) are defined in the glossary in Appendix I. "Sewer", "sanitary sewer", and "wastewater" are assumed to be interchangeable terms. Similarly, "drainage", "stormwater", and "storm sewer" are also deemed to be interchangeable terms.

## I. SCOPE OF THE CRITERIA

5. The criteria apply to all issue credit ratings, ICRs, and SACPs assigned to waterworks, sanitary sewer, and drainage utility systems of a U.S. municipality or comparable political subdivision, including irrigation districts, whose financial obligations are secured by a pledge of revenues. We have observed that these utilities primarily rely on user charges for the ongoing operations of drinking and/or raw-water sales, sanitary sewer collection and/or treatment, and/or storm drainage systems, or some combination thereof, directly to the end (retail) customer. The public or municipal enterprises within the scope of this criteria include, generally, those with the following characteristics:
  - The entity is a political subdivision or a wholly-owned department of a political subdivision, even if there is a concession agreement with a private operator;
  - The entity has a public policy-making role, mission, or mandate to deliver an essential service deemed necessary for public health, and is not a commercial entity such as an investor-owned utility or a corporation (whether a bankruptcy-remote or single-purpose entity or not);
  - The entity primarily relies upon user charges and has ongoing cash from operations, and has at most minimal or

immaterial contractual payments or appropriations from a related political subdivision such as the general fund of the LRG; and

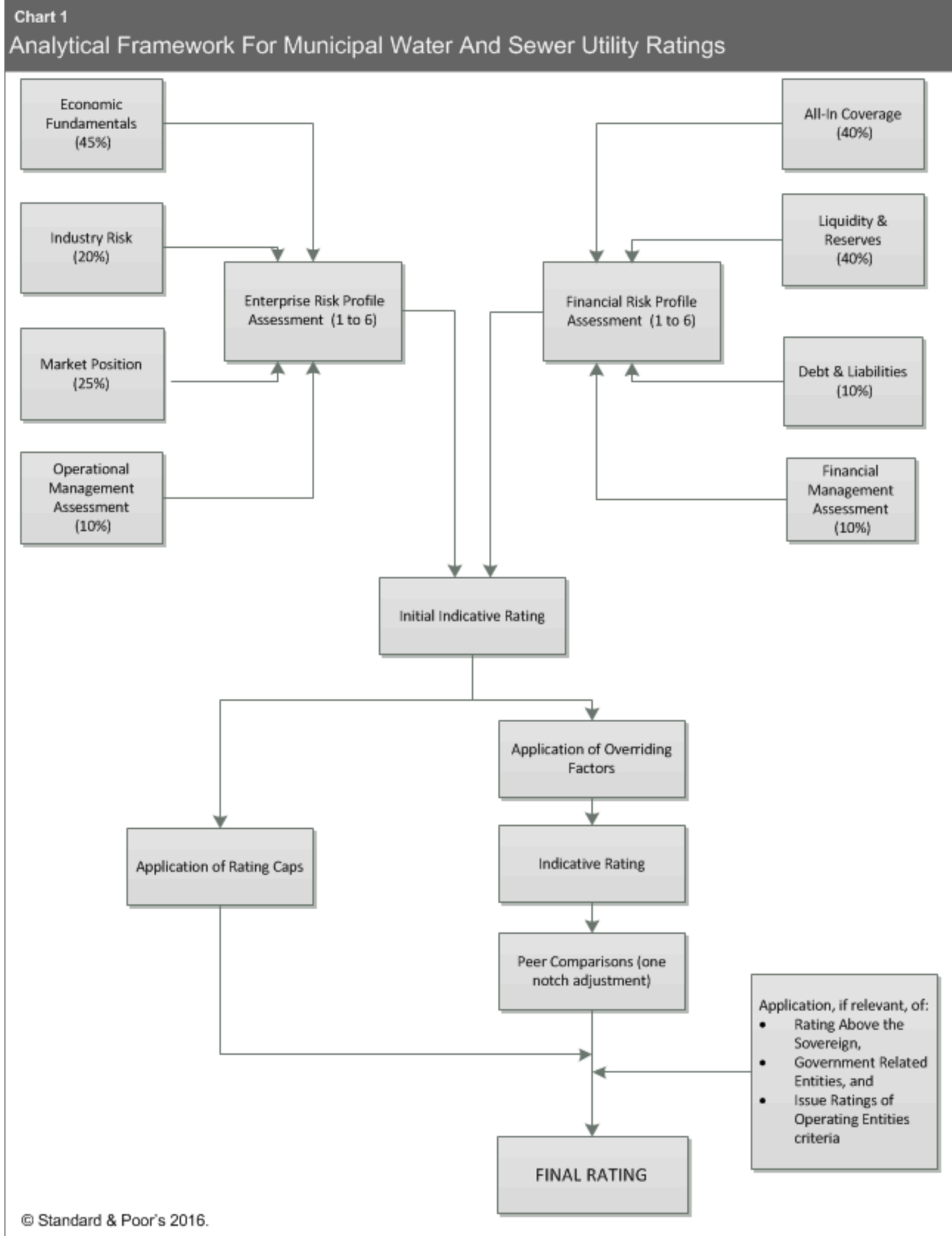
- The entity is not registered as a commercial enterprise or public corporation and does not pay dividends (other than to its affiliated general government), establish ownership shares, or access the equity markets.
6. While not an exhaustive list, examples of debt rated under these criteria are utility revenue bonds issued by a city, utility board, retail raw-water service providers such as irrigation districts, or regional authority that provides primarily retail water and sewer service. Examples of entities that are not rated under these criteria include investor-owned utilities, master limited partnerships, and limited liability corporations. Investor-owned utilities and corporations are rated using "Corporate Methodology", published Nov. 19, 2013, and "Key Credit Factors For The Regulated Utilities Industry", published Nov. 19, 2013. Master limited partnerships are rated based on "Methodology: Master Limited Partnerships And General Partnerships", published Sept. 22, 2014. If we believe that the contributions from the LRG or related taxing entity could significantly change the utility's financial condition, it would also fall outside the scope of these criteria.
  7. Entities whose revenues are derived entirely from sales for resale to other entities, such as traditional wholesale providers or joint action agencies, will continue to be evaluated based on the "Wholesale Utilities" criteria, published May 24, 2005. An LRG often also owns and/or operates other enterprises such as electric systems, gas distribution utilities, solid waste systems, or other utility services. While many of the themes addressed below also apply in part to those other enterprises, Standard & Poor's addresses rating criteria and methodology specifically and separately for those enterprises.
  8. Many LRGs issue general obligation (GO) or other tax-secured debt\* on behalf of the utility or the utility has the legal authority to issue it itself; in those cases, the applicable GO or special tax rating criteria and methodology will continue to be applicable. When more than one type of revenue secures the debt, we apply our criteria, "Methodology: Rating Approach To Obligations With Multiple Revenue Streams", published Nov. 29, 2011, to determine the rating approach.
  9. U.S. municipal utilities generally operate as either a department of an LRG or are themselves an LRG. We generally do not believe that the utilities benefit from an explicit or implicit level of extraordinary support from the U.S. federal government or state government in which the utility operates in case of distress. Therefore, very few of them are deemed a government-related entity (GRE). For those few rated utilities that are deemed to be a GRE, these criteria are used to determine the SACP, which is used as an input to the GRE criteria (see "Rating Government-Related Entities: Methodology And Assumptions", published March 25, 2015) to arrive at an ICR.
  10. We consider the strength of lease revenue or certificates of participation issued by utilities to be equivalent to a pledge of the same lien of revenues. There is, therefore, generally no rating distinction on these securities, reflecting the enterprise nature of public utilities. If a utility were to issue appropriation-secured debt that did not meet the above assumptions, we would apply our criteria "Appropriation-Backed Obligations", published June 13, 2007.
  11. Legal provisions, in our view, covenant the utilities to act—or not take action—in a manner that provides at least some minimal protections for the benefit of bondholders. As discussed further in paragraphs 112 and 113, we view legal provisions as generally being either credit-neutral or credit-negative. However, the complete absence of any document such as an indenture or bond resolution, or silence by existing related documents toward establishing an orderly flow

of funds, a lien on pledged revenues securing the bonds, a rate covenant, and an additional bonds test would likely preclude assigning an issue credit rating based solely on these criteria. Other criteria, however, such as, for example, general obligation bonds or multiple revenue streams, might instead apply.

## II. SUMMARY OF THE CRITERIA

12. These criteria use the same framework as our criteria for other municipal enterprise sectors. Specifically, these criteria assign ratings using a framework that considers enterprise risk (enterprise risk profile) and financial risk (financial risk profile). Chart 1 depicts how the enterprise and financial risk profile assessments interact to arrive at the initial indicative rating. The indicative rating is established after applying any appropriate positive or negative overriding factors. The final outcome—which could be an issue credit rating, SACP, or ICR—is reached after making any appropriate peer adjustments. The final rating may be capped based on the presence or absence of certain conditions or characteristics. If more than one cap is applicable, the final rating would be no higher than the lowest cap.
13. If a utility meets the guidelines outlined in "Criteria For Assigning 'CCC+', 'CCC', 'CCC-', And 'CC' Ratings" published on Oct. 1, 2012, then the rating will be assigned based on that criteria.
14. To increase the transparency in the rating methodology and improve the comparability of our ratings globally, the revised methodology is intended to:
  - Provide further detail on how we assess and calibrate each of the identified rating factors;
  - Offer a more detailed explanation of how we arrive at a utility rating through the analysis of the rating factors; and
  - Identify overriding factors that may result in a rating different from the initial indicative rating identified below.
15. The enterprise risk profile and financial risk profile will be measured through an evaluation of the following factors, with the respective weights in parentheses. The enterprise and financial risk profile assessments are rounded weighted averages of these factors.  
  
**Enterprise Risk Profile**
  - Economic fundamentals (45% of the enterprise risk profile assessment);
  - Industry risk (20%);
  - Market position (25%); and
  - Operational management assessment (10%).  
**Financial Risk Profile**
  - All-in coverage (40% of the financial risk profile assessment);
  - Liquidity and reserves (40%);
  - Debt and liabilities (10%); and
  - Financial management assessment (10%).
16. The initial assessment of each of the above factors may be strengthened or weakened by certain qualitative factors, as applicable, and as discussed in more detail beginning in paragraph 46, in order to arrive at the final assessment.
17. The initial indicative rating results from the combination of the enterprise and financial profile assessments in table 1.

18. In certain cases, the initial indicative rating in table 1 contains two options for a given combination of enterprise and financial risk profile assessments. In those cases, we would use our expectations of the utility's future performance to determine which of the two initial indicative ratings to use.
19. The indicative and the final rating could both be capped by the presence or absence of certain conditions, regardless of the rating outcome suggested by table 1. Rating caps are absolute, meaning that the positive relative adjustments described herein, including peer adjustments discussed in paragraph 21, do not apply and the indicative and the final rating cannot exceed the cap. These rating caps are summarized in table 2.
20. The indicative rating could differ from the outcome suggested by table 1 based on certain overriding factors that result in the indicative rating moving a specified number of notches above or below the initial indicative rating. These overriding factors are summarized in table 3.
21. The indicative rating could be raised or lowered by one notch to arrive at the final rating due to comparisons with similarly rated peers. Peer adjustments can be used to capture a more holistic view of creditworthiness. The holistic analysis includes rare or strongly positive or negative characteristics which the criteria do not separately identify. These criteria define peers as other municipal utilities. Peers may include other utilities with similar ratings, size, operational commonalities, geographic location, or financial profile characteristics. Based on our assessment, location may be defined as geographically contiguous or an area in another part of the country with similar economic and market fundamentals. Peer adjustments could also be made based on comparisons with sector-wide data, including ratio analyses. Peer groups may change through time as operating conditions or organization-specific features evolve.
22. The final rating may be constrained by the sovereign rating on the U.S., in accordance with "Ratings Above The Sovereign: Corporate And Government Ratings—Methodology And Assumptions", published on Nov. 19, 2013, as further explained in "Credit FAQ: U.S. Public Finance Ratings And Criteria For Ratings Above The Sovereign", published on Dec. 19, 2013.
23. We deem very few of the utilities rated by these criteria to be GREs. In rare cases where we deem a utility to be a GRE, we use these criteria to determine the stand-alone credit profile. The final rating is based upon our application of "General Criteria: Rating Government-Related Entities: Methodology And Assumptions" published March 25, 2015.
24. Issue credit ratings, including subordinate-lien debt, will be determined based on our view of the ICR and the legal/covenant package, as more fully described in "Assigning Issue Credit Ratings of Operating Entities", published May 20, 2015. Further guidance regarding our view of debt security and covenants is in paragraphs 112 and 113.



### III. IMPACT ON OUTSTANDING RATINGS

25. Standard & Poor's maintains issue credit ratings or issuer credit ratings on revenue-secured debt for almost 1,600 municipal utilities included in the scope of these criteria. We estimate that about 25% of the total ratings will change as a result of the application of these criteria; about half of which would be raised and the other half lowered, most often by one notch.

### IV. EFFECTIVE DATE AND TRANSITION

26. These criteria are effective immediately and apply to all new and outstanding ratings within the scope. We intend to complete our review of issuers affected within the next 12 months.

### V. METHODOLOGY

#### A. Overall Framework For Rating Municipal Utilities

27. These criteria are used to assign credit ratings to utilities based on quantitative and qualitative analysis of a range of economic, financial, operational, management, and debt factors. The analytical framework is articulated around two major components: the Enterprise Risk Profile and Financial Risk Profile. The enterprise and financial risk profile assessments are determined by combining (see chart 1) and then rounding to the whole number the weighted average of the individual factors (as outlined in paragraph 15). The initial indicative rating results from the combination of the enterprise and financial risk assessments as shown in table 1.

Table 1

Determining The Initial Indicative Rating						
Enterprise Risk Profile	Financial Risk Profile					
	1	2	3	4	5	6
	Extremely Strong	Very Strong	Strong	Adequate	Vulnerable	Highly Vulnerable
1 Extremely Strong	aaa	aa+	aa-	a	bbb+/bbb	bb+/bb
2 Very Strong	aa+	aa/aa-	a+	a-	bbb/bbb-	bb/bb-
3 Strong	aa-	a+	a	bbb+/bbb	bbb-/bb+	bb-
4 Adequate	a	a/a-	a-/bbb+	bbb/bbb-	bb	b+
5 Vulnerable	bbb+	bbb/bbb-	bbb-/bb+	bb	bb-	b
6 Highly Vulnerable	bbb-	bb	bb-	b+	b	b-

1. The initial indicative rating results from the interaction between the enterprise and financial risk profile assessments. Potential adjustments to the initial indicative rating are noted in Table 2. The final rating could be one notch higher or one notch lower than the indicative rating based on peer comparisons. 2. For ratings below 'B-' see "Criteria For Assigning 'CCC+', 'CCC', 'CCC-', And 'CC' Ratings", published Oct. 1, 2012, as well as "Methodology: Timeliness of Payments, Grace Periods, Guarantees, and Use of 'D' and 'SD' Ratings", published Oct. 24, 2013. 3. In certain cases, the initial indicative rating in table 1 contains two options for a given combination of enterprise and financial risk profile assessments. In those cases, we would use our expected view of the utility's future performance to determine which of the two initial indicative ratings to use.

28. The enterprise and financial risk profiles described in paragraph 15 may contain sub-factors. Each factor and sub-factor are assessed on a numerical scale, with '1' being the strongest outcome.

29. If the quantitative metric evaluating a particular factor falls at or near a cut-off point, we may assign the stronger assessment if trends are improving or we believe future metrics or attributes will improve, or the worse assessment if trends are weakening or we believe future metrics or attributes will deteriorate.
30. The initial, or anchor assessment for each factor may be adjusted based on qualitative factors for each characteristic or condition that may be present or lacking. Tables 6, 17, 19, and 21 describe some of the most common qualitative factors that could adjust each of the respective initial assessments. The maximum net adjustment to the initial assessments is two points. For example, if the initial assessment is a '3' and there are two favorable adjustments and one unfavorable adjustment identified, the final assessment for that factor would be a '2.' The liquidity and reserves assessment, however, can be capped at a '5' or worse regardless of the initial assessment based on paragraphs 99 through 101.
31. The criteria also include various caps and overrides (see paragraphs 32-41, as well as tables 2 and 3) to arrive at the indicative rating, as well as the ability to raise or lower the indicative rating by one notch based on peer comparisons (see paragraph 21) to establish the final rating. The final rating may be influenced by the rating on the U.S. or its associated country risk, as well as the assignment of issue credit ratings and use of subordinate-lien debt, in accordance with paragraph 24.

## B. Rating Caps And Overriding Factors

32. In certain, but rare, circumstances, the final rating is capped at a certain level. The final rating could be lower than the cap, depending on the severity of the condition present. The rating caps outlined in table 2 are absolute, meaning that the positive relative adjustments described below do not allow the final rating to exceed the cap. If multiple caps are applicable, the rating cap used will be the lower of all those that apply.

Table 2

Summary Of Factors That Cap The Final Rating	
Condition	Result
Either the Operational or the Financial Management Assessment is "Vulnerable" (see paragraph 34)	Indicative and final ratings are capped at 'A'
Both the Operational and the Financial Management Assessments are "Vulnerable" or there is a going concern opinion (see paragraph 34)	Indicative and final ratings are capped at 'BBB-'
Utility or its affiliated LRG is recovering from a financial crisis, emerging out of a recent bankruptcy or receivership, or has significant consultant oversight following an event of default, including a covenant violation (see paragraph 35)	Indicative and final ratings are capped at 'BBB+'
Negative extraordinary intervention (see paragraph 36)	Indicative and final ratings are capped at the lower of 'BBB' or the GO rating of the affiliated general government
Both the all-in coverage and liquidity and reserve assessments result in a '5' or worse (see paragraph 37)	Indicative and final ratings are capped at 'BB+' although if we view liquidity as especially vulnerable, the final rating would generally be capped at 'B+'
Either the Operational or the Financial Management Assessment is "Vulnerable" and the liquidity and reserve assessments are a '5' or worse (see paragraph 38)	Indicative and final ratings are capped at 'BB+'
Both the Operational and Financial Management Assessments are "Vulnerable" and the liquidity and reserve assessments are a '5' or worse (see paragraph 38)	Indicative and final ratings are capped at 'B+'
Management demonstrates a lack of willingness to support financial obligations, or we believe the utility may be considering bankruptcy or receivership filing (see paragraph 39)	Indicative and final ratings on any rated debt not in default are capped at 'B'



33. Certain conditions or characteristics result in an indicative rating that is different from the initial indicative rating, as follows in table 3. If multiple notch overrides are applicable, the indicative rating is based on the net effect of those overrides.

Table 3

Summary Of Overriding Factors	
Condition	Result
Median household effective buying income is among the top quintile of the U.S. (see paragraph 40)	Indicative rating generally will be one notch above that suggested by table 1
Median household effective buying income is among the top 10% of the U.S. (see paragraph 40)	Indicative rating generally will be two notches above that suggested by table 1
Median household effective buying income is among the lowest quintile of the U.S. (see paragraph 40)	Indicative rating generally will be one notch below that suggested by table 1
All-in coverage is at or above 3.0x or cash and investments are equivalent to at least 24 months of operating expenses (see paragraph 41)	Indicative rating generally will be one notch above that rating suggested by table 1
U.S. country risk assessment is '4', '5', or '6' (see paragraphs 44 and 45)	Final enterprise risk profile assessments capped at '4', '5', or '6'
Total indebtedness is likely to increase substantially, but magnitude, scope, and timing are not fully defined (see paragraph 82)	Final financial risk profile assessment generally will be worsened by one point

#### Factors That Cap The Indicative And Final Ratings

34. *Weak management.* The decentralized and autonomous nature of U.S. local governments creates a stronger link between management and credit quality. In cases where either the Operational or the Financial Management Assessment (OMA, FMA; see paragraphs 70 and 106) is characterized as 'vulnerable', the indicative and final ratings will be no higher than 'A'. In cases where both the OMA and FMA are characterized as 'vulnerable' or if an auditor has delivered a going concern opinion with the most recent review of the utility's or associated LRG's financial position, the indicative and final ratings will be no higher than 'BBB-'.
35. *Emergence from bankruptcy or receivership.* A utility that has just emerged from bankruptcy or receivership or a period of consultant or governmental oversight by definition has just been in a period where the financial risk profile—and possibly the enterprise risk profile as well—is extremely weak. Although a credit may emerge with an improved financial risk profile after debt forgiveness or other negotiated settlements or restructuring, or under a new management team, we will cap the indicative and final ratings at 'BBB+' until the utility has re-established a two- or three-year record of audited financial performance, at which time we would re-evaluate it using that new financial history as part of the analysis.
36. *Negative extraordinary intervention.* The line between what may be termed "extraordinary" and "ongoing" negative intervention is not always clear. However, examples of negative extraordinary intervention include cash-stripping or other measures that the affiliated LRG may impose to divert resources from the utility, as the LRG's needs rise. In such cases, the utility's indicative and final rating will be capped at the lower of 'BBB' and the GO debt rating of the affiliated LRG.
37. *Weak total liquidity combined with weak all-in coverage.* If the utility's all-in coverage as well as liquidity and reserves assessments are both a '5' or worse, we will cap the indicative and final ratings at 'BB+', although if we view liquidity as a weakness that cannot be rectified by other available resources, then the rating would be no higher than 'B+'. In our view, poor assessments on both of these factors imply that the utility has no margin for error in any of its operating, debt service, or capital funds in the event of an unfavorable or unplanned variance to its annual budget.



38. *Weak management and liquidity and reserves* Strong management alone can lend itself to operational and fiscal continuity and can serve as a credit stabilizer. In addition, liquidity and reserves provide working capital, funding for unexpected operational problems, and general budgetary flexibility. For example, if contingent liabilities become actual liabilities, both of these factors can together moderate or even relieve a utility from distress. Conversely, their absence creates a limiting factor and often leads to rapid credit deterioration. As such, when the OMA or FMA is characterized as 'vulnerable' and the liquidity and reserves assessments a '5' or worse, the indicative and final ratings are capped at no higher than 'BB+'. If both management assessments are characterized as 'vulnerable' and the liquidity and reserves assessments a '5' or worse, the indicative and final ratings are capped at no higher than 'B+'.
39. *Weak willingness or capacity to support financial obligations.* If the utility's or sponsoring governmental entities' representatives take actions that indicate active consideration of bankruptcy in the near term, or if there is a perceived change in the willingness or lack of capacity to honor all long-term, legally-binding financial obligations in full and on a timely basis, the indicative and final ratings will be capped at 'B'. If applicable, we would apply "Criteria For Assigning 'CCC+', 'CCC', 'CCC-', And 'CC' Ratings", published Oct. 1, 2012 or "Rating Implications Of Exchange Offers And Similar Restructurings", published May 12, 2009. Such a condition might be evidenced by way of conversations with management or governance, verifiable reports in the media, public disclosure, or other informational sources we judge to be relevant. The utility's issuer ratings would be 'D' or 'SD' following a default on an actual financial obligation, or in a distressed exchange, which we would apply "Rating Implications Of Exchange Offers And Similar Restructurings".

#### Factors That Notch From The Initial Indicative Rating

40. *Exceptionally strong or weak income indicators.* Extremely favorable or unfavorable demographics--measured as well above or below the strongest or weakest initial assessments, respectively--could imply extraordinary flexibility or limitation in a utility's ability to enhance its operating revenues on an ongoing basis. Median household effective buying income (MHHEBI) at or above the highest quintile of distribution according to the U.S. Census Bureau's and Bureau of Labor Statistics' joint "Current Population Survey" would generally result in a one-notch rating uplift from the initial indicative rating. Median household effective buying income at or above the top 10% of all households would receive a two-notch rating improvement. Median household effective buying income in the lowest quintile in the U.S. would lower the initial indicative rating by one notch.
41. *Exceptionally strong financial risk profile.* Should there be in our view a high probability that a utility's overall extremely strong financial risk profile is likely to continue on a forward-looking basis even when allowing for stresses, volatility, and additional future obligations, the initial indicative rating would generally be improved by one notch. "Exceptionally strong" is defined specifically to mean: a) All-in coverage\* at or above 3x; or b) Cash and equivalents, that (i) are unrestricted and/or designated but ultimately lawfully available for any general utility purposes; and (ii) are equivalent to at least 24 months of operating expenses (without giving favor to an already-existing debt service reserve fund, and calculated consistent with our definition of days' cash\*).

## VI. Enterprise Risk Profile Assessment

42. The factors that are evaluated for the Enterprise Risk Profile assessment are summarized in table 4.

Table 4

### Description Of Enterprise Risk Profile Factors

#### Economic Fundamentals (45% of Enterprise Risk Profile assessment)

Economic fundamentals measure the strength of the utility's service area economy, including the utility's demographics, characteristics and trends about the customer base, and how crucial the utility's principal customers are to operating revenues.

Table 4

Description Of Enterprise Risk Profile Factors (cont.)
<b>Industry Risk (20%)</b>
The industry risk evaluation aims to evaluate the external environment in which municipal utilities operate and its relevant characteristics, including cyclical, competitive risk, and growth environment.
<b>Market Position (25%)</b>
The market position measures the relative affordability of utility rates given the income indicators and relative poverty of the service area, as well as comparability of rates with those of peers in the region or state.
<b>Operational Management Assessment (OMA; 10%)</b>
The OMA evaluates our view of the effectiveness of utility management in ensuring that there is alignment of operational, environmental, strategic, and financial goals to support the system's success.

43. The descriptors of outcomes for the overall enterprise risk profile are based on the scales shown below in table 5. The criteria do not round to a whole number until arriving at a final enterprise risk profile.

Table 5

Descriptors For Enterprise Risk Profile Factors	
Assessment	Description
1	Extremely Strong
2	Very Strong
3	Strong
4	Adequate
5	Vulnerable
6	Highly Vulnerable

## Factors That Affect The Enterprise Risk Profile

Country risk assessment for the U.S.

44. The relevant credit risks for U.S. municipal utilities are also influenced by country-specific risks (see "Country Risk Assessment Methodology And Assumptions", published Nov. 19, 2013). Country risk is the risk an entity faces by having some of its operations or assets exposed to one or more countries. Country-specific risks consist of economic risks, institutional and governance effectiveness risks, financial system risk, and payment culture/rule of law risk. The country risk assessments determined on a scale from '1' (very low risk) to '6' (very high risk).
45. The country risk assessment with respect to these criteria derives from the U.S. country risk assessment as determined under the criteria cited above. If the U.S. country risk assessment is a '3' or better, there is generally no positive or negative impact on the final rating. However, if the U.S. country risk assessment is '4' or worse, this could affect the enterprise risk profile assessment. Specifically, if the U.S. country risk assessment is '4', '5', or '6', we will generally assign an enterprise risk profile assessment of no better than '4', '5', or '6', respectively.

## A. Assessing Economic Fundamentals

46. The assessment of economic fundamentals provides insight into the employment, socioeconomic, and demographic environment in which the utility operates as well as the health of the service area economy relative to that of the U.S. as a whole.
47. The assessment of economic fundamentals is based on two measures: median household effective buying income of the service area as a percentage of the U.S. and the trend in economic output of the service area, as measured by its real (inflation-adjusted) gross county product. If the service area spans multiple counties, these criteria pro rate the metrics based on the estimated population in each county as a percent of the total service area population.
48. The two components are combined (see table 6) to determine an initial economic fundamentals assessment. Positive and negative qualitative factors are then evaluated for applicability to achieve the final economic fundamentals assessment. The cumulative net effect of all adjustments is limited to an improvement or worsening of two points to the initial assessment.

Table 6

Assessment Of Economic Fundamentals			
Current Median Household Effective Buying Income (% of U.S.)	Real Gross County Product, Rate Of Change Last Two Years, Plus Projected Next Two Years [1]		
	Stronger than U.S. rate of GDP annual growth by 1% or more	Within +/- 1% of U.S. rate of GDP annual growth	Weaker than U.S. rate of GDP annual growth by 1% or more
125% or more	1	1	2
100% to 125%	1	2	3
75% to 100%	2	3	4
35% to 75%	3	4	5
35% or lower	4	5	6
Qualitative Factors Positively Affecting The Initial Assessment Include:			
Efficiencies and natural economies of scale associated with being a larger utility (see paragraph 50).			
Broad and diverse employment base, or ratepayers living in the service area have access to such a base (see paragraph 51).			
Unique key local employer, such as a university or military base, that serves to stabilize the economy, even if skewing income indicators unfavorably (see paragraph 55).			
Qualitative Factors Negatively Affecting The Initial Assessment Include:			
Unemployment rate of the county of 10% or worse.			
A steadily declining population, or dependent population* of more than 55%.			
The lack of efficiencies and natural economies of scale because the utility is smaller (see paragraph 50).			
Employment sector concentration, or inauspicious prospectsexist for a key major local employer within the next 36 months (see paragraph 54).			
The 10 largest customers account for 25% or more of operating revenues, or the top one is 10% or more (see paragraph 56).			
Each applicable qualitative factor changes the initial assessment by one point (with the exception of the economies of scale adjustor, which can result in a one-half point change), but the net total of all adjustments would never improve or worsen the initial assessment by more than two points. [1] For example, if the base/current year is 2015, the time period examined would be 2014 (actual, full-year); 2015 (annualized estimate); 2016 (forecast) and 2017 (forecast).			

49. For service areas in which there is no specific MHHEBI data available, the data from the next largest measurable

geographic unit will be used. For example, if the service area is that of a small unincorporated portion of a county and if that data is not available, the MHHEBI of that county will be used. An exception could be if there is clear evidence that the service area incomes and macroeconomic trends are materially and measurably different from the geographical unit at large, in which case we will use the best available data.

50. Certain natural operating efficiencies and economies of scale are often present in larger utilities. Examples may include physical redundancies or the ability to spread fixed costs over a greater number of gallons sold. These criteria define a utility's size based on average annual gross operating revenues of the three most recent audited fiscal years. Table 7 outlines the applicable adjuster that is combined with the result from table 6. For instance, if the three most recent years resulted in operating revenues of \$21.4 million, \$24.7 million, and \$29.8 million, the simple average of the three would be \$25.3 million, resulting in a neutral adjuster rather than a worsening by 0.5. Drainage-only utilities are excluded from this adjuster, as we believe they have an inherently lower operating risk and are usually smaller by revenues by their nature. Irrigation districts are separately addressed in paragraph 57.

Table 7

Economies Of Scale Qualitative Factor	
Total Operating Revenues (Mil. \$)	Change to Initial Assessment
More than 150	(1)
Between 75 and 150	(0.5)
Between 25 and 75	0
Between 5 and 25	0.5
Less than 5	1

51. We assess whether the utility's service area participates in a larger, broad, and diversified economy at the federally-defined metropolitan statistical area (MSA) level. The determination is based on an evaluation of employment diversity, employment growth, and the employment base. Each of these three factors is characterized as 'strong', 'moderate', or 'weak' consistent with a similar evaluation in "Local Government GO Ratings Methodology And Assumptions", published Sept. 12, 2013. Participation in a 'strong' MSA would generally lead to a one-point improvement in the initial assessment. Conversely, no adjustment would be applied if we deem the MSA as 'weak' or if the service area does not lie within a defined MSA. If the MSA is described as moderate, applying the broad and diverse positive adjustment may still be applicable if the macroeconomic trends of the MSA and our expectations for future performance in the next two years are reasonably likely to cause existing metrics to improve.
52. The diversification of the utility's service area's economic structure is important to assess the potential volatility of its employment base and its resilience to stresses. An example of a deep, broad, and well-diversified economy would be employment-sector distribution that closely resembles that of the U.S. at large. This depth and diversity could lessen the impact on the utility's operating revenues better than an economy with more exposure to a single employer or industry or only a few employment sectors. A small and concentrated or shallow economic base also tends to be more exposed to external factors and macroeconomic cycles.
53. If employment in an individual sector—excluding education/health, government, and transportation/trade/utilities—represents more than 30% of the nonfarm work base, the local economy is deemed to be highly susceptible to that employment sector. As such, a one-point worsening of the assessment would be applied.



An example would be a small town that does not participate in an MSA and has a major manufacturing component in the local labor force.

54. Regardless of the employment sector or nature of its business, if a major local employer has publicly announced that within the next 36 months it will be reducing or completely shuttering operations within the service area or we expect it to do so, a one-point unfavorable adjustment would be warranted.
55. If we do not deem there to be a broad and diverse economy, the presence of a major employer can still sometimes act as a stabilizing force, possibly even adding context to lower income indicators. In such a case, a favorable adjustment of one point may be applied. Examples of such major employers include higher education institutions, health care facilities, military installations or even, more rarely, a large and stable corporate presence.
56. Employment and customer base characteristics typically have a close correlation to utility operating revenues. If a small number of customers provide a large amount of revenues, the utility could be exposed to revenue volatility. As such, when the top 10 retail customers contribute 25% or more of total operating revenues, or the top one retail customer is 10% or more of total operating revenues, the assessments worsened by one point.
57. For irrigation districts and comparable raw-water providers for which the end-use customer is agriculture or agriculture-related—such as ranches or dairy—MHHEBI and relative economic performance are less meaningful. In our observations, these economies generally have inherent limitations given the dominance of farming to the local economy, and non-municipal consumptive use patterns. Therefore, for these issuers, the default initial economic fundamentals assessments a '3', although negative, but not positive, qualitative factors that adjust the initial assessment could still be applicable.

## B. Assessing Industry Risk

58. Consistent with "General Criteria: Methodology: Industry Risk", published Nov. 19, 2013, we consider industry risk for utilities covered under these criteria as very low, the most favorable assessment possible on a '1' to '6' scale, with '1' being the best.
59. The following are key characteristics of the utility industry as relevant to the industry risk factor:
- Cyclical risk assessment of '2' based on Standard & Poor's review of historic economic cycles and peak-to-trough changes in revenues and margins for regulated utilities. Economic cycles can affect nonrecurring revenues such as impact fees as well as drive priorities in the capital improvement plan but weather, not the economy, is generally the largest single determinant to a favorable or unfavorable variance to budget in any single fiscal year;
  - Very low competitive risk of '1', owing to legal and practical barriers to entry in nearly all jurisdictions, and that as an essential service there is no substitution risk;
  - Nearly all municipally-owned water, sewer, and drainage utilities are natural—and in most cases statutory—monopolies with complete autonomy over their own rates by the local decision-making body. There are some states in which the utility must seek approval of rate adjustments by some state regulatory body, such as a public service commission. There are also some states in which large rate increases, before they can take effect, may be subject to some kind of popularly-initiated opportunity to be overturned by the electorate, such as in California via Proposition 218.

The industry risk assessment of very low risk applies to all utilities rated by these criteria regardless of the state in which they operate. While likely uncommon, limitations on rate autonomy would likely be measured elsewhere, such as in financial performance if the timeliness and magnitude of requested versus granted rate case lead to deterioration in credit quality.

## C. Assessing Market Position

60. The relative poverty rate is important because service areas that have not just lower MHHEBI levels, but disproportionately higher percentages of the population located in the lowest quintiles of the MHHEBI distribution curve, may exhibit greater sensitivity toward perceived affordability even if adjusted for low inflation or a favorable cost of living. Therefore, it is possible that the impact of utility bills and related rate increases is even more profound in those communities compared to communities with stronger economic fundamentals.
61. Actual consumption patterns vary from region to region based mainly on climate, precipitation, use of demand side management and water conservation measures, and economic factors. The market position assessments based on the actual average monthly residential water and sewer bill. The information generally will be based on the most recent audited fiscal year, unless we believe that historical rates are not indicative of future rates. In those cases we will base the assessment on projected rates. For purposes of this assessment we calculate the monthly bill as follows:

The total annual residential operating revenues plus any related fees, surcharges and taxes divided by the number of active residential metered accounts. The result is divided by 12 to arrive at the monthly bill.

62. There could be practical limitations to applying paragraph 61 such as transparent and timely financial reporting and disclosure details, the sophistication of the utility's customer information system database, and the possibility that the utility may deem this information as competitively sensitive and nonpublic. If the actual average monthly residential bill is not readily available, the market position assessment assumes a residential customer that in one month has used 6,000 gallons of both treated water and sanitary sewer service, conceptually similarly to the Environmental Protection Agency (EPA)'s residential indicator (see Appendix III, paragraph 133). In cases where the utility's chosen unit of billing is measured in hundred cubic feet (ccf), the closest rounded equivalent of 8 ccf is used (see Appendix III, paragraph 135). Any minimum or base charge or 'lifeline rate' is also included in the calculation, as are any related fees, surcharges, or taxes regardless of who is levying them since the burden ultimately still lies with the customer to pay it.
63. To gauge the annual utility burden to the household, the assumed monthly bill, as calculated above in paragraph 61 or 62, is multiplied by 12 to estimate the total annual cost to the household for utility service.
64. Relative rate affordability is calculated as follows: in the numerator is the annual household utility burden as calculated above from paragraph 63, and in the denominator the actual median household effective buying income of the service area of the utility (or the closest approximation, as established in paragraph 49), then multiplied by 100. This produces the cost to the household of its utility expenses as a percentage of total disposable income.
65. For irrigation districts, the customer base is primarily farms in agricultural production rather than residential customers

that rely on the system for essential public health needs, and in this context, poverty rates do not apply. However, the pricing power of many irrigation districts is constrained by the more elastic demand for water from these businesses, and in many cases the availability of alternative supply sources, such as groundwater produced from privately-owned wells. Therefore, for these issuers, the default initial market position assessments a '3', although negative, but not positive, qualitative factors that adjust the initial assessment could still be applicable should they, in our view, affect the system's revenue-raising flexibility.

66. For drainage utilities rated by these criteria, rate structures tend to be exclusively either one of two types:

- A flat monthly charge tied to a residential property as the base unit of billing, with larger properties or parcels assessed as if they were equivalent to multiple residential properties. For example, a strip mall may be treated for billing purposes as if it were five equivalent residential units. For those utilities whose charges are based on a flat fee, we assume the fee assessed on a single-family residential property; or
- A fee based on the actual impervious surface area of the property. (Standard & Poor's assumption for the monthly bill is based on a residential property. For those utilities whose charges are based on impervious surface area rather than a flat fee, we assume 2,000 square feet of impervious surface area.)

67. Tables 8, 9, and 10 summarize how the criteria evaluate the market position of the utility, driven by the rate affordability and relative poverty rate. Table 8 applies to water-, or drainage-only utilities. Table 9 applies to sewer-only utilities. Table 10 applies to water and sewer/drainage utilities.

Table 8

Market Position Assessment, Water- Or Drainage-Only Utilities			
	Annual Utility Bill As A Percent Of Median Household Effective Buying Income		
Percent of county's population living in poverty	Less than 1%	1% to 2%	More than 2%
Less than 10%	1	2	3
10% to 20%	2	3	4
20% to 30%	3	4	5
More than 30%	4	5	6

For utilities with an anchor assessment of 5 or 6 that have recently completed or achieved substantial completion of a historically capital-intensive period, the anchor assessment may improve by one point (see paragraph 68).

Table 9

Market Position Assessment Sewer-Only Utilities			
	Annual Utility Bill As A Percent Of Median Household Effective Buying Income		
Percent of county's population living in poverty	Less than 1.25%	1.25% to 2.50%	More than 2.50%
Less than 10%	1	2	3
10% to 20%	2	3	4
20% to 30%	3	4	5
More than 30%	4	5	6

For utilities with an anchor assessment of 5 or 6 that have recently completed or achieved substantial completion of a historically capital-intensive period, the anchor assessment may improve by one point (see paragraph 68).

Table 10

Market Position Assessment For Water And Sewer/Drainage Utilities			
	Annual Utility Bill As A Percent Of Median Household Effective Buying Income		
Percent of county's population living in poverty	Less than 2.25%	2.25% to 4.50%	More than 4.50%
Less than 10%	1	2	3
10% to 20%	2	3	4
20% to 30%	3	4	5
More than 30%	4	5	6

For utilities with an anchor assessment of 5 or 6 that have recently completed or achieved substantial completion of a historically capital-intensive period, the anchor assessment may improve by one point (see paragraph 68).

68. Rate affordability without context may under- or over-represent credit strengths. For example, a utility with rates much higher than comparable peers that has already made the capital commitments to address a regulatory mandate driven by past noncompliance with environmental permits would be viewed more favorably than a utility with similarly high rates but that is facing a huge unfunded regulatory mandate. For utilities that have relatively high rates—as defined by an initial assessment of a '5' or '6'—but have recently completed or substantially completed an extraordinarily capital-intensive period in its history, the initial market position assessment generally will be improved by one point.
69. The criteria do not establish a preference toward a certain water and sewer utility rate structure. For example, management may use a flat or fixed rate, volume-based rates, or some combination thereof. Similarly, the criteria do not penalize a rate structure that encourages conservation—essentially incentives for lower sales through price signals.

## D. Assessing Operational Risk Management

70. The Operational Management Assessment (OMA) consists of a review of the following sub-factors, assessed from (1) strong; (2) good; (3) standard; to (4) vulnerable and weighted as shown below to calculate the OMA:
- Asset adequacy and identification of operational risks (40%);
  - Organizational effectiveness, management expertise, and drought management plan (20%); and
  - Rate setting practices (40%).
71. The OMA refers to risks associated with the operation of the utility; financial policy is covered by the Financial Management Assessment.
72. The results from the observed evaluations assessed in paragraph 6 are converted to a '1' to '6' scale as shown in table 11.

Table 11

Operational Management Assessment (OMA) Conversion To Six-Point Scale		
Observed Evaluation	OMA	Characterization
1.0 to 1.2	1	Strong
1.2 to 1.8	2	Good
1.8 to 2.5	3	Good
2.5 to 3.1	4	Standard
3.1 to 3.6	5	Standard



Table 11

Operational Management Assessment(OMA) Conversion To Six-Point Scale (cont.)		
3.6 to 4.0	6	Vulnerable

73. The assessment of all sub-factors is based on a preponderance of evidence. Specifically, in our judgment are most, but not necessarily all, of the described characteristics applicable? A utility receives a neutral assessment if 'standard' for any sub-factors for which there is insufficient evidence to assign either a positive or negative assessment. However, some sub-factors may receive a negative assessment if a utility has a record of failing to disclose key relevant information.
74. There is no favored governance structure for the utility within the methodology. Some municipal utilities are a department or component unit of the local political subdivision, governed by the same locally elected officials as the LRG. Other utilities are governed by an independent or quasi-independent utility board. The governance structure will be credit-neutral so long as there seems to be the ability for management to operate the utility as an ongoing, viable enterprise, largely independent from politics, with professionals who are capably engaged in risk oversight and can balance interests appropriately.
75. Asset adequacy and identification of operational risks examines how successfully management is faring by owning and operating a public water, sewer, or drainage enterprise (see table 12). Utilities are subject to the federal Safe Drinking Water Act of 1974 ("SDWA", 42 U.S.C. § 300f, as amended) and Clean Water Act of 1972 ("CWA", 33 U.S.C. § 1251, as amended), or even an municipal separate storm sewer system (MS4) drainage utility permit. However, the utility may be in various degrees of compliance or readiness. Examples include a long-term water supply that is appropriate in both quantity and quality to serve the existing and likely future customer base or treatment capacity that is sufficient to meet average and peak day demand. Recognition is given for any water reuse system in place, whether indirect or direct. Also assessed in this sub-factor is the materiality of nonrevenue water\* (see Appendix II, paragraph 136).

Table 12

Asset Adequacy And Identification Of Operational Risks Assessment	
<b>Strong</b>	The utility has in place or is in the process of securing a raw-water supply that is reasonably projected to be sufficient through the life of the bonds. The integrity of the distribution and/or collection system, meters, and raw-water delivery assets is strong, or efforts are ongoing to rehabilitate them. Treatment capacity to meet average and peak day demand is sufficient in virtually every circumstance. Climate risk assessments incorporated into planning and operations as a potential risk to the system. Water audits based on industry-accepted performance standards are incorporated into the annual budget such that nonrevenue water physical and economic losses are not material. A thorough vulnerability assessment across all critical assets has been performed to industry standards and been completed and incorporated into operations as much as reasonably possible.
<b>Good</b>	The existing raw-water supply is sufficient for the existing customer base. The utility may need to enhance the supply sometime beyond the next 20 years, depending on growth and climatology/hydrology, but management has identified this risk into its long-term plans. Inflow, infiltration, and/or raw-water delivery are generally not problematic, or efforts are ongoing to rehabilitate them. Treatment capacity to meet average and peak day demand or flow is sufficient with only rare exceptions. Climate risk assessments addressed in some key areas, such as supply planning or flood protection. Water audits based on industry-accepted performance standards are done on a regular, if not annual, basis such that nonrevenue water physical and economic losses are small. A vulnerability assessment has been completed to industry standards in most key areas and incorporated where management most deems relevant.
<b>Standard</b>	The existing raw-water supply will likely need to be enhanced within the next 10 to 20 years, but options for addressing the need have not yet been identified or, if so, have not been fully priced. Inflow, infiltration, and/or raw-water delivery are pronounced but not yet material or are problematic but will be addressed within the current capital improvement plan. Treatment capacity to meet average day demand is sufficient, but peak day demand or wet weather flows create constraints until ongoing projects are completed. Climate risks are identified, but other priorities preclude any immediate actions. Water audits based on industry-accepted performance standards are done only when management deems them necessary, likely evidenced by nonrevenue water economic and physical losses that are material. A vulnerability assessment has been done, perhaps only partially or perhaps not in accordance with industry standards, and implementation has been either partial or not at all.
<b>Vulnerable</b>	The existing raw-water supply and/or treatment capacity cannot currently and consistently meet peak day demand or flows. The raw-water supply is subject to a high degree of regulation and/or litigation, which can quickly introduce long-term uncertainty. Inflow, infiltration, and/or raw-water delivery are problematic and material, or the utility is highly dependent on or susceptible to another water purveyor. Climate risk is not explicitly addressed either in plans or operations. Water audits based on industry-accepted performance standards are not done and nonrevenue water economic and physical losses are problematic. No vulnerability assessment has been done.

76. To evaluate organizational effectiveness, management expertise, and drought management planning, the assessment looks to the key elected or appointed decision-makers and top staff (see table 13). This sub-factor assesses how well utility leaders are able to convey the needs of the utility to external and internal stakeholders in a manner that is likely to allow the utility to continue with stability. While there may be some practical limitations due to civil service regulations, mentoring and succession planning among key staff can ensure continuity. Also evaluated is whether or not the utility has a resource management plan (voluntary or mandatory) that outlines steps it would implement in a drought situation, even if the state has its own rules or guidelines. This would be deemed separate from any existing water conservation-oriented rate schedule the utility may already have in place year-round.

Table 13

Organizational Effectiveness, Management Expertise, And Drought Management Plan Assessment	
<b>Strong</b>	Management communicates the utility's long-term needs and strategic goals, such as funding requirements, approval of crucial projects, and resource planning, to internal and external key officials on a regular, credible, and transparent basis, putting the utility in the best reasonable position for operational continuity. Examples might include ongoing public education campaigns, town halls, dedicated web sites, and social media. Management has considerable knowledge, experience, or a track record of success in operating all of the utility's key business units in an integrated fashion. Internal mentoring and succession plans are common. Management is able to put its strategic planning into reality; therefore, the utility is successful relative to its peers. The utility has its own drought management plan that details how much conservation it would seek depending on a drought's severity while still ensuring revenue requirements are met.
<b>Good</b>	Public outreach and transparency is a common part of the organizational culture, even if not comprehensive across all key business units. Management has reasonable expertise and experience and has established pathways for succession and continuity where it can; therefore, operational surprises are rare. Management has a good track record of successfully converting strategic decisions into constructive action. The utility has its own drought management plan that details how much conservation it would seek depending on a drought's severity although how it might meet its revenue requirements in such a scenario is uncertain.
<b>Standard</b>	Management depth or breadth is limited in some areas, such that the loss of key personnel would create, only temporarily, a learning curve for the new staff but not likely to measurably affect the utility for long. Public outreach is done generally only when necessary, often associated with a large or controversial project. Operational and financial strategies are generally aligned. The utility has no drought management plan but does operate in a state with a clearly detailed plan that already exists.
<b>Vulnerable</b>	The utility relies on one or only a few key employees or perhaps relies on external consultants. Negative variances are not uncommon. The utility has a history of regulatory or legal infractions beyond an isolated episode or outside industry norms, which introduced an as-yet-unaddressed challenge. Operational and financial strategies may have had one or more major misalignment, limiting the ability to move forward on something important. Neither the utility nor the state in which it operates has an existing drought management plan, making resource sustainability as well as meeting financial obligations uncertain.

77. Most, but not all, utilities are monopolies with autonomy over their own rates. If the utility is rate-regulated, the history of timeliness on rate cases and the magnitude of what was granted versus requested will be examined. The evaluation of rate-setting practices looks beyond magnitude or frequency of rate adjustments. Instead, we evaluate whether management has acted, in our opinion, in a manner generally supportive of credit quality when tough decisions have needed to be made. Such credibility can also aid community support when such increases are needed and help protect future rate-making decisions from short-term political manipulation and decrease the potential for rate shock (see table 14).

Table 14

Rate-Setting Practices Assessment	
<b>Strong</b>	When rate increases have been needed, the decision-making body has been supportive and timely, even to the extent that multiyear, preapproved rate increases are common, if not standard. Financial decisions are prudent, in our view, rather than simply politically expedient and that could possibly be to the detriment of the utility's near-term financial health. Periodic rate studies (internal or external) are common.
<b>Good</b>	Rate considerations are done on a year-to-year planning horizon rather than over a long-term time frame, but generally are a politically approved if and when necessary.
<b>Standard</b>	The rate covenant and/or additional bonds test are the de facto guide as to when rate adjustments are necessary, but that is still enough for the political decision makers to agree to a rate increase.
<b>Vulnerable</b>	Rate increases are often in reaction to a weakened financial position, including a technical default or some other legal covenant violation, even if the recent debt service payments were made on time and in full. There is clear evidence of recent political decisions to defer or downsize needed rate increases.

## VII. Financial Risk Profile Assessment

78. The factors that are evaluated for the Financial Risk Profile assessment are summarized in table 15.

Table 15

Description Of Financial Risk Profile Factors
<b>All-In Coverage (40% of Financial Risk Profile assessment)</b>
Analysis includes examination of historical and preferably GAAP-based results, the current financial condition of the utility, and projected scenarios for the next one to three fiscal years. The focus is on total financial capacity versus total revenue requirements.
<b>Liquidity and Reserves (40%)</b>
This factor incorporates all lawfully available cash reserves and external working capital or liquidity sources, including bank lines in force within the life of any short-term obligations.
<b>Debt and Liabilities (10%)</b>
This factor incorporates mainly quantitative, but also qualitative, analyses about not just the absolute measure of the utility's indebtedness but also the capacity to incur and support additional debt, especially in relation to maintaining any minimum financial metrics as covenanted to bondholders. Measurable liabilities such as pension and postemployment benefits can lead to adjustments to this initial factor.
<b>Financial Management Assessment (10%)</b>
Analysis includes an evaluation of ongoing management practices and policies that can be supportive of financial performance and continuity, as well as internal controls and reporting. Examples include establishing a minimum level of acceptable working capital, predictability of cash transfers from the utility system, and creating and perpetually updating a long-term financial forecast.

79. The descriptors for the overall financial risk profile are based on the scale in table 16.

Table 16

Descriptors For Financial Risk Profile Factors	
Description	Corresponding Assessment
Extremely Strong	1
Very Strong	2
Strong	3
Adequate	4
Vulnerable	5
Highly Vulnerable	6

80. These criteria use assessments derived from historical and projected financial performance. In most cases, the ratio calculations are based on the three most recent independently audited financial statements. Our analytical assessment of pro forma or projected data will be used for those ratios affected by additional debt issuance or funded from cash reserves, or when we believe that historical financial performance is not representative of expected future performance.

81. For all-in coverage or liquidity and reserves assessments that use multiple years of historical and projected data, each single year receives a preliminary assessment. The preliminary assessments from each applicable year are averaged together to then derive one single assessment for that factor.



## Factors That Affect The Financial Risk Profile

Significant additional upcoming debt

82. If a utility has potentially sizable, but as yet unspecified, capital plans that could result in material additional debt and/or the use of reserves—including when there is or will be high levels of non-discretionary capital funding, and we determine that such plans have a reasonable likelihood of occurrence but are not specific enough yet to determine pro forma or projected financial metrics—we generally will worsen the entire financial profile by one point. Compelling factors that would likely preserve credit quality include preapproved rate adjustments multiple years into the future, or an existing debt service schedule that allows for the new debt to be layered on in a manner that we believe is unlikely to worsen financial performance.

### A. Assessing All-In Coverage

83. While there are a variety of financial metrics that measure the ratio of revenue to revenue requirements, including financing obligations, we believe that all-in coverage best gauges the utility's true total financial capacity.
84. All-in coverage is our internally adjusted debt service coverage metric that we believe best tracks the use of every dollar of utility operating revenues, regardless of lien position, accounting treatment or ultimate purpose. It also incorporates recognition of fixed charges or costs, which we define as certain long-term recurring items that are debt-like in nature, even if legally treated as an operating expense. An example of a fixed cost would be the take-or-pay minimum payment to the utility's wholesale provider of treated water. Other examples of fixed costs would include rental expenses for a sale-leaseback arrangement, GO debt which we consider self-supporting debt\*, or other situations that reflect support of off-balance sheet debt. Vertically integrated utilities may not have any fixed costs. We would not include any tax-supported debt for which there is a dedicated tax revenue, nor would we include the tax revenue itself that is meant specifically to pay the tax-supported debt. All-in coverage also excludes adjustments to fixed costs for small or non-material financing obligations such as a capital equipment lease for a vehicle or copy machine.
85. These criteria also look to total revenues less expenses (but excluding non-cash items), even if the pledge to bondholders is gross operating revenues. This is because we assume that the utility must be a viable, ongoing, cash flow-positive enterprise. Standard & Poor's defines all-in coverage as:

$$\frac{[(\text{Revenues} - \text{Expenses} - \text{Total Net Transfers Out}) + \text{Fixed Costs}]}{(\text{All Revenue Bond Debt Service} + \text{Fixed Costs} + \text{Self-Supporting Debt Service})}$$

Total net transfers out are defined as transfers from the utility fund minus transfers into the utility fund, including but not limited to:

- Transfers that are viewed as general fund resources, such as a payment in lieu of taxes, indirect cost reimbursements, and open-ended transfers;
- Transfers that reimburse the general fund for pension and other postemployment benefit (OPEB) payments to the

general fund made on behalf of utility employees and retirees;

- Transfers that fund pay-as-you-go capital expenditures in another governmental fund; and
- Transfers to support any other governmental operations regardless of the destination fund.

We deem net transfers out that legally or by practice support debt service of another governmental fund as part of the denominator's self-supporting debt. Cash that does not truly leave the utility, such as a set-aside into a rate stabilization reserve or pay-as-you-go fund are not included as transfers out. Similarly, the application of a rate stabilization fund (RSF) or other cash on hand as a transfer in would not be included in the all-in coverage calculation, although we would note the presence and use of the RSF as a qualitative adjustment to the all-in coverage assessment as described in paragraph 89.

86. The accounting treatments and even provisions in the bond documents vary; for example transfers are usually a use of surplus net revenues, but sometimes may be treated as an operating expense. The methodology would treat recurring transfers as an operating expense to measure the general government's reliance on the transfer payment. An annual transfer payment that is consistent in nature, such as based on a percentage of operating revenues or a fixed dollar amount, is more predictable than one that is not defined and therefore could be as big as the general government decides it should be. For example, an all-in coverage calculation of less than 1x might suggest a net cash withdrawal from the utility fund. Table 17 summarizes the all-in coverage evaluation.
87. In cases where an unconditional take-or-pay minimum, capacity payment or demand charge does not exist or is not explicit, these criteria will impute what we deem to be a logical and reasonable equivalent for the purpose of calculating all-in coverage. The methodology uses the utility's relative contribution to its wholesaler provider's total operating revenues as the basis for the fixed-cost imputation. For example, if the utility being rated accounts for 15% of its wholesaler provider's total annual operating revenues, and the wholesaler's total annual debt service payments are \$10 million, then \$1.5 million will be imputed as fixed costs for all-in coverage calculation purposes.

Table 17

Assessment Of All-In Coverage	
Initial Assessment	All-In Coverage
1	1.60x or above
2	1.40x to 1.60x
3	1.20x to 1.40x
4	1.10x to 1.20x
5	1.00x to 1.10x
6	Below 1.00x
<b>Qualitative Factors Positively Affecting The Initial Assessment Include:</b>	
A significant portion of operating revenues have a high degree of certainty, such as from wholesale sales with take-or-pay minimums, even if those wholesale sales serve to depress total debt service coverage due to cost-of-service rates (see paragraph 88).	
The planned, but infrequent use of a rate-stabilization fund indicates the absence of a weakness, all other things being equal, as opposed to the presence of a credit-positive characteristic. Still, it could explain poor coverage that has otherwise been consistently better (see paragraph 89).	
<b>Qualitative Factors Negatively Affecting The Initial Assessment Include:</b>	
A debt service schedule that makes it extremely likely the utility will need significant growth or large rate increases to meet future requirements, such as a deferral of principal repayment far into the future.	

Table 17

### Assessment Of All-In Coverage (cont.)

Debt service coverage that is reliant on new customer fees or nonrecurring nonoperating cash inflows just to achieve a ratio of at least 1x (see paragraph 90).

Exposure to interest-rate sensitivity via variable-rate debt that is enough to lead to a worse initial assessment (see paragraph 91).

Each applicable qualitative factor changes the initial assessment by one point, but the net total of all adjustments would never improve or worsen the initial assessment by more than two points.

88. Some utilities provide mostly retail service directly to the consumptive-use customer, but may also generate operating revenues via sales for resale, or wholesale sales. Wholesale sales are often at a cost-recovery rate with much smaller net operating margins, serving to depress total all-in coverage. For utilities with between 20% and 49% of operating revenues coming from firm (contractual) wholesale sales, a one-point improvement in the all-in coverage assessment would be applied to put the depressed all-in coverage into better context.
89. The planned use of rate stabilization funds (RSF) or equivalent designated reserves from time to time could, analytically, temper measurable declines from a trend of stronger financial performance. Yet recurring reliance on an RSF in lieu of other measures such as rate adjustments to address imbalances among revenues, expenses, and debt service can be evidence of a credit weakness. Utilities that perform down to the level of permissive legal covenants, such as the allowance of the use of certain cash balances toward satisfying a rate covenant or additional bond test and potentially creating a weak alignment between revenues and expenses, would see the initial assessment lowered by one point. This is especially true when actual performance indicates insufficient pledged revenues without the use of cash.
90. It is not uncommon for utilities to charge a one-time fee as new structures hook up to the system (exclusive of any deposit that may be required), often called a connection or impact fee. The all-in coverage ratio will be stressed by hypothetically removing these nonrecurring items from total revenues, to gauge a utility's relative dependence upon these fees just to achieve sufficient financial performance. Such fees are strongest during periods of high growth in the number of metered accounts. While perhaps they are pledged revenues, impact fees can overstate revenues available for debt service. Conversely, a slowdown or cessation of such growth—especially if not expected by management—could create a precipitous drop in the utility's financial performance and expose vulnerability in the financial risk profile. Achieving a ratio of less than 1x solely from recurring revenues on a consistent basis indicates structural budgetary imbalance and would worsen the assessment by one point.
91. These criteria do not establish a guideline as to an allocation of variable-rate debt as a percentage of total long-term debt. However, if all-in coverage by our projections would change between one of the initial assessments to another in table 17 as a result of a change in interest rates, the all-in coverage assessment will reflect the worse of the two possible outcomes.

## B. Assessing Liquidity And Reserves

92. The liquidity and reserves analysis measure is days' cash\* available to the utility as well as the actual available cash reserves. As noted in paragraph 50 for the enterprise risk profile assessment, size is also a factor in the utility's financial

risk profile. A utility may have cash reserves, for example, that are equivalent to a high days' cash number yet the actual cash on hand may be nominally very small. Both days' cash and actual cash are evaluated based on table 18. The resultant preliminary evaluations are applied to table 19 to produce the initial liquidity and reserves assessment.

93. For example, a utility with \$1.2 million of cash on hand, which for this example equated to 74 days of operating expenses, would receive a '3' for the days' cash ratio, and a '4' for the actual cash levels, based on table 18. When each preliminary evaluation is applied to the matrix in table 19, the initial liquidity and reserves assessment would be at the intersection of (3, 4), or an assessment result of '4.' Qualitative factors, if any, would then be applied to improve or worsen the '4' to arrive at the final liquidity and reserves assessment.
94. The liquidity and reserves assessments intended to measure how the utility's internal sources, such as cash reserves and cash flow generation, and external sources—namely undrawn capacity under committed lines of credit—provide it the working capital to fund immediate need on an ongoing basis. The undrawn, available portion of committed bank lines maturing beyond the next 12 months are included as cash for the calculations in table 18; draws are included with both long-term debt and, if due within the next 12 months, debt service.
95. The liquidity analysis looks not only to cash and equivalents that are unrestricted or unassigned (i.e., unencumbered by legally enforceable agreements and not earmarked for specific purposes) and immediately available, but also gives credit to reserves that are designated, but ultimately available, for any lawful purpose. Examples include renewal and replacement funds, RSF, or other similar set-aside (but not truly restricted) cash. The criteria make no distinction between reserves that can only be appropriated by action of the highest decision-making body, or reserves that can be appropriated by simple administrative action, so long as the reserves are ultimately lawfully available for any purpose regardless of the reporting entity's label on it as determined by Governmental Accounting Standards Board (GASB) statement No. 54. Issuers that do not use a generally accepted accounting principles (GAAP) basis of presentation, or for which the financial statements do not provide a transparent and explicit breakdown of cash, must provide details of their cash position.
96. Cash that we deem to be restricted—for example a debt service payment-to-be-made, customer deposits, a fiduciary responsibility like a pension or decommissioning fund, unspent bond proceeds, or is related to a posting of collateral, among other restrictions—will never be included in the analysis of liquidity. Any debt service reserve fund will also be excluded.
97. Intragovernmental borrowing sometimes occurs between the utility and its associated general government, or sometimes even between one division of the utility and another division. Cash in other funds in most cases would not be used to calculate the liquidity ratios, since those other funds likely have their own operating requirements. If a utility pools its cash with other major operating funds or governmental units, only cash that is truly the utility's will be counted in the calculation.

**Table 18**

Liquidity And Reserves Preliminary Evaluation		
Preliminary Assessment	Days' Cash	Actual Cash
1	Greater than 150	More than \$75 million
2	90 to 150	\$20 million to \$75 million



Table 18

Liquidity And Reserves Preliminary Evaluation (cont.)		
3	60 to 90	\$5 million to \$20 million
4	30 to 60	\$1 million to \$5 million
5	15 to 30	\$500,000 to \$1 million
6	Less than 15	Less than \$500,000

Table 19

Liquidity And Reserves Assessment						
Days' Cash Ratio, Preliminary Evaluation	Actual Cash On Hand, Preliminary Evaluation					
	1	2	3	4	5	6
1	1	1	2	2	3	4
2	1	2	2	3	3	4
3	2	2	3	4	4	5
4	2	3	4	4	5	5
5	3	3	4	5	5	6
6	4	4	5	5	6	6

**Qualitative Factors Positively Affecting The Initial Assessment Include:**

The utility is a distribution- and/or collection-only system with predictable wholesale costs, reducing the level of working capital the utility needs to maintain (see paragraph 98).

**Qualitative Factors Negatively Affecting The Initial Assessment Include:**

Liquidity is skewed by seasonality or is otherwise not indicative of actual averaged daily working capital levels.

The lack of a "pass-through" component to the rate structure if the utility could face the potential of rapid volatility in operating costs, such as raw-water or commodity costs, implying the utility is using its own cash to subsidize changes in expenses.

High refinancing risk over the next two to three years.

Exposure to contingent liabilities can cap this assessment at a '5' or a '6' (see paragraphs 99 to 101 and table 20).

Each applicable qualitative factor changes the initial assessment by one point, but the net total of all adjustments would never improve or worsen the initial assessment by more than two points unless an assessment cap of '5' or '6' is applicable.

98. In cases where the utility is a distribution- and/or collection-only system and off-balance sheet obligations are predictable, the utility's working capital requirements, and therefore liquidity levels, may not need to be as high. In those cases, the liquidity and reserves assessment may be improved by one point.
99. As described in "Contingent Liquidity Risks", published March 5, 2012, contingent liabilities\* correspond to explicit or implicit obligations that a utility may incur under certain circumstances. These risks could affect the utility's financial position if they materialize and if not otherwise offset by factors such as available liquidity, undrawn capacity under committed lines of credit, or market access. Furthermore, contingent liabilities might arise from a series of smaller risks that, by themselves, may not otherwise appear material, but could cascade in magnitude as proximity to the trigger or timing becomes less remote.
100. These criteria measure both contingent liabilities as a percentage of total long-term debt, as well as available reserves\* that may be legally utilized to mitigate some or all of the potential claims on the utility's cash.
101. For utilities assessed as a '5' on table 20, the liquidity and reserves assessments the lower of a one-point worsening of the initial assessment or a cap of '5'. For utilities whose table 20 initial assessment results in a '6', the liquidity and

reserves assessments capped at '6'. Any other result is not impactful to the liquidity and reserves assessment.

Table 20

Contingent Liabilities Assessment						
Available Reserves/Contingent Liabilities (%)	Contingent Liabilities/Total Long-Term Debt (%)					
	<20	20 to 30	30 to 40	40 to 50	50 to 60	>60
Above 250	--	--	--	--	--	--
200 to 250	--	--	--	--	--	--
150 to 200	--	--	--	--	--	--
100 to 150	--	--	--	--	--	5
50 to 100	--	--	--	--	5	6
Below 50	--	--	--	5	6	6

## C. Assessing Debt And Liabilities

102. The analysis of a utility's indebtedness is useful for a number of reasons: it can give insight into, for example, whether the utility is in the middle of a large growth- or rehabilitation-driven capital program. It can also be closely tied to the utility's rates and capacity for additional debt, which incorporates the analysis of the capital improvement plan (CIP). For the debt and liabilities assessment we use debt to capitalization\*.
103. The debt and liabilities assessments summarized in table 21.

Table 21

Assessment Of Debt And Liabilities	
Initial Assessment	Debt To Capitalization
1	Up to 20%
2	20% to 35%
3	35% to 50%
4	50% to 65%
5	65% to 80%
6	Greater than 80%
Qualitative Factors Positively Affecting The Initial Assessment Include:	
A relatively rapid roll-off of the long-term debt, with 65% or more coming due in 10 years or less, assuming there are no bullet maturities within that schedule that would realistically need to be refinanced. Total debt is not reduced by the presence of a debt service reserve fund.	
Qualitative Factors Negatively Affecting The Initial Assessment Include:	
Concerns about pension funding, which could be evidenced by a funded ratio of less than 80%, an actuarial study that is more than three years old, or a trend of not fully funding the annual required contribution for the pension or postemployment benefits (see paragraph 105).	

104. Given the recent emphasis on recognition and funding as on-balance sheet long-term liabilities for both pension (GASB Statements 67 and 68) and other postemployment benefits (OPEB; GASB Statement 45), consideration as to the utility's share of unfunded liabilities as measured on the balance sheet or accompanying notes will be noted. Although these obligations are debt-like in nature, they are not equivalent to debt because the magnitude and timing of the obligation are not completely certain based on factors such as actuarial assumptions, future benefit levels, and earnings of the fiduciary fund or trust. Similarly, the annual required contributions and pay-as-you-go actual cash

outlays are commonly treated as part of total personnel-related expenses if not accounted for in fiduciary funds or net transfers; these criteria focus on actual cash expended, not a noncash item such as one related to fair value reporting. Finally, the unfunded liability may lie elsewhere, as many utility employees are civil servants and therefore beneficiaries by way of the associated municipal general government's umbrella plans, rather than a utility-specific plan. If the utility is part of a larger general government rather than a stand-alone entity, we assume the utility's funded ratio is proportionally the same as that of the entire unit of government absent better information.

105. Nevertheless, unfunded or underfunded obligations can be a credit factor. The impact of pension and OPEB obligations depends on the degree to which such costs will likely escalate and whether the government has plans to address them. If the funded ratio for the largest plan in which the utility participates is not at least 80%, and if any of the following also is true, the assessment will be worsened by one point:

- The actuarial study is more than three years old, or
- The utility has a trend of not fully funding its pension ARC.

If there is no credible plan to address the obligation(s), the assessment will be worsened by two points.

## D. Assessing Financial Risk Management

106. Standard & Poor's evaluates established and ongoing management practices and policies in the seven areas under control of management that are most likely to affect credit quality. The FMA, like the OMA, ranges from (1) strong; (2) good; (3) standard; or (4) vulnerable. These areas and their weights are:

- Revenue and expense assumptions (10% of total FMA),
- Budget monitoring and interim reporting (10%),
- Long-term financial planning (15%),
- Long-term capital planning and asset management (20%),
- Investment and liquidity policies (20%),
- Debt management policies (10%),
- Transparency and accountability (15%).

107. To convert the FMA to a '1' to '6' scale, see table 22.

Table 22

Financial Management Assessment (FMA) Conversion To Six-Point Scale		
Observed Evaluation	FMA	Characterization
1.0 to 1.2	1	Strong
1.2 to 1.8	2	Good
1.8 to 2.5	3	Good
2.5 to 3.1	4	Standard
3.1 to 3.6	5	Standard
3.6 to 4.0	6	Vulnerable
Qualitative Factor Negatively Affecting The Initial Assessment		

Weak legal provisions when assigning issue credit ratings (see paragraphs 112 and 113).

108. The ability of a utility's management team to implement measures on a timely basis that will in our opinion proactively shape the utility's financial and operating condition can be crucial to maintaining credit stability. The assessment looks at the environment in which financial decisions affecting the utility occur. Generally, higher-rated entities will, over time, develop "best practices" that not only serve as guiding rules of thumb (or actual codified policies) to ensure continuity, but also ensure logical rhyme-and-reason to decisions that are made.
109. This assessment is based on a preponderance of evidence. Specifically, in our judgment are most, but not necessarily all, of the described characteristics applicable? A utility receives a neutral assessment if 'standard' for any sub-factors for which there is insufficient evidence to assign either a positive or negative assessment. However, some sub-factors may receive a negative assessment if a utility has a record of failing to disclose key relevant information.
110. By focusing on a utility's policies and practices, the FMA is not an evaluation of the competency or aptitude of individual finance professionals, nor is it an evaluation of management's ability to handle unique challenges. Moreover, the nature of the utility's governing body, the effectiveness of its governance practices, and issues of public policy involved in utility-related decisions are beyond the scope of this analysis. The FMA analyzes the environment in which financial decisions are made, including how both the ordinary and extraordinary are identified and addressed as relevant to the utility's ability to fund them and to what degree those risks are transparently reviewed and reported to ensure ongoing continuity. Financial results are assumed to manifest themselves in other visible ways and are addressed elsewhere in these criteria. The purpose of the focus on policies and practices is to evaluate the potential for credit quality to move away from that which is currently indicated by results.
111. Transparency and accountability in reporting, regardless of governance structure, is important in order to ascertain key quantitative data. States that require annual audited financial statements increase the likelihood that financial information will be available, and late audits will be noted. The use of GAAP usually enhances reporting detail and consistency across the sector, making it easier to have a sufficient uniform method of interpretation. States that allow cash accounting tolerate a lesser degree of completeness and consistency, and transparency suffers. As noted in "Alternative Financing: Disclosure Is Critical To Credit Analysis In Public Finance", published Feb. 18, 2014, a review of alternative financings and exposure to contingencies is a key component to understanding the entirety of all the risks and revenue requirements to which the utility is exposed.
112. We believe that creditor security can be weakened without a minimum set of covenants that constrain the utility's behavior. If we view the utility's legal provisions as sufficiently weak, the initial FMA would generally be worsened by one point. We believe that in the municipal utility sector those minimums generally include the below covenants and that they must exist at all times:
- A rate covenant to maintain an annual debt service coverage ratio of at least 1.0x or higher from recurring or ongoing revenues. However, where indentures permit the utility to use cash balance to achieve rate covenants, whether the cash is in the form of a rate stabilization account or other available funds, we factor the use of such funds into the ratings evaluation in accordance with paragraph 89;
  - An additional bond test that places some limits on the amount of increased leverage that will otherwise impair credit quality of the entity; and
  - Provisions establishing remedies for when a rate covenant is violated, such as a review of the current rates.

113. In addition, when the liquidity and reserves assessment for existing rated utilities is a '4' or worse, we will worsen the FMA by one point if there is no debt service reserve fund (DSRF) in an amount equivalent to at least half of the average annual debt service requirements. A DSRF typically provides immediately available supplemental liquidity in the event of pledged revenue insufficiency for the payment on the obligations then due.

- We would not recognize the utility as having a DSRF at all if it is only conditionally funded, such as a so-called "springing" DSRF. In such cases, this is, in our view, associated with conditions likely to come at a time when the utility is least able to afford additional demand on its cashflow.
- A DSRF may be satisfied with an unconditional surety policy or similar arrangements with another financial counterparty. If we believe that the counterparty would be unable to provide funding for the DSRF in a stress scenario, and the counterparty could not be easily replaced on a timely basis, we would not recognize the utility as having a DSRF.

114. The following tables detail each of the seven financial practice areas examined by the FMA.

115. The revenue and expense assumptions assessment evaluates if the organization's financial assumptions that support the annual budget and any financial forecast are realistic and well-grounded from both long-term and recent trend perspectives.

Table 23

#### Revenue And Expense Assumptions Assessment

<b>Strong</b>	Weather-normalized, formal historical trend analysis is performed and updated annually for both revenue and expenses; regular effort is made to determine whether one or more factors will cause revenues or expenses to deviate from their long-term trends over the next few years.
<b>Good</b>	Assumptions for most key line items in pro forma reports are analyzed and updated regularly, while others may assume simplistic changes over time such as linear or inflationary growth or flat from year to year.
<b>Standard</b>	Optimistic assumptions exist that, while supportable, add risk; assumptions are based on recent performance, but little evidence of questioning or validating assumptions exists.
<b>Vulnerable</b>	Assumptions neglect likely shortfalls, expense pressures, or other pending issues; assumptions lack prudent validation.

116. The evaluation of budget monitoring and interim reporting examines how, if at all, management reconciles year-to-date progress versus the budget adopted at the beginning of the fiscal year. This component evaluates if there are procedures for reviewing the budget based on updated information and actual-to-date performance to ensure fiscal targets and revenue requirements are met, and to what degree the interim reporting is disclosed.

Table 24

#### Budget Monitoring And Interim Reporting Assessment

<b>Strong</b>	At least quarterly budget surveillance is maintained to identify problem areas, which are publicly reported to the utility's governing body.
<b>Good</b>	Semiannual budget reviews exist; management identifies causes for variances between budget and actual performance and reports them to the utility's governing body.
<b>Standard</b>	A deviation from the budget is only reported because it has occurred; material variances between budget and actual performance are identified after they have occurred but not captured in projections for the remainder of the fiscal period.
<b>Vulnerable</b>	No formal process exists for regular review and timely updating of budget during the year.

117. The long-term financial planning assessment focuses on whether or not a financial forecast exists, the length of the planning horizon is, and if it includes a comprehensive identification of all reasonably likely upcoming revenue



requirements to determine how the utility will meet those revenue requirements, such as adjusting rates or implementing cost containment measures.

Table 25

Long-Term Financial Planning Assessment	
<b>Strong</b>	A regularly updated pro forma financial projection exists with a planning horizon of at least three years beyond the current budget year. The forecast includes future impacts to operating and maintenance (O&M) expenses and total financing obligations—both existing and probable—are identified. Impacts to rates or the ability to generate appropriate levels of pledged revenues through cost containment measures, for example, are clear. Planned use of designated cash reserves may occur infrequently, but structural balance is a clear goal.
<b>Good</b>	Pro forma projections exist and are comprehensive as described for a 'strong,' but are typically over a planning horizon of no more than the upcoming budget year plus one to two years into the future.
<b>Standard</b>	Multiyear projections are done but not updated until the last year of the current forecast. Multiyear projections are done, but with focus only on existing revenue requirements and exclude debt financing that is likely to be issued within the planning horizon, or ignore looming infrastructure investment needs such as growth or regulatory mandates.
<b>Vulnerable</b>	No long-term financial planning exists; O&M planning is done on a year-to-year (or budget-to-budget) basis. Near-term challenges are met with short-term fixes.

118. The asset management and long-term capital planning sub-factor assesses if a CIP exists, the length of the planning horizon, how and why projects make the list, and a summary of the most likely funding sources for the identified projects.

Table 26

Asset Management And Long-Term Planning Assessment	
<b>Strong</b>	Strategic and comprehensive planning focusing on the utility's infrastructure requirements, physical and other assets, and ability to continue to meet service levels is combined with likely sources of funding for identified projects; the plan and its priorities are regularly updated and transparently communicated. A characterization of "strong" will include planning not only the current budget year but also for at least five years beyond that.
<b>Good</b>	A comprehensive multiyear capital improvement program exists as described for a "strong" assessment but the planning horizon is less than five years.
<b>Standard</b>	The current-year capital expenditures are identified in the budget, but any future projects are currently nothing more than a wish list; a multiyear capital plan exists but funding sources are unclear or absent.
<b>Vulnerable</b>	Capital planning is done as needs arise, but no more frequently than on a year-to-year (or budget-to-budget) basis.

119. Seasonal cash flow needs, capital requirements, unbudgeted or unanticipated items, and contingency hedges all suggest at least some level of working capital cushion to be maintained. The investments and liquidity policies assessment evaluates if management has identified preferred cash reserves by way of an adopted policy or even a target. Liquidity policies and targets must be grounded in reality; these criteria would not give credit for a liquidity policy if it is set at a level so far above current or recent financial performance that we would not view it as attainable. Further, this sub-factor identifies if there are locally-adopted permitted investments guidelines, and if management reconciles and reports on its cash and investments with any regularity.

Table 27

Investment And Liquidity Policies Assessment	
<b>Strong</b>	The utility has embedded policies on the maintenance of minimum reserves, regardless of whether such reserves are deemed by management to be unrestricted or designated yet available for any lawful purpose; the policies are reflective of realistically attainable and sustainable levels. Permitted investment guidelines or policies exist, even if the utility's policies reflect or even mimic the state's policies. Reports on the utility's investment portfolio are prepared and reported to the utility's governing body at least quarterly.
<b>Good</b>	Targets for reserve levels exist by practice, are tied to meaningful levels, and are generally met or exceeded. While the utility's de facto cash management guidelines may defer to the state's permitted investment statutes, no local policy exists. The utility's management reports on its investments at least semiannually to its governing body.
<b>Standard</b>	Management has a target for a preferred level of cash reserves but it seems to be unrealistic given financial performance, or is so newly defined that it may be many years before such reserves are accumulated. Informal or nonpublished investment policies exist, are tracked by administrative staff but only irregularly or at the end of the fiscal year.
<b>Vulnerable</b>	Absence of informal reserve policies; even if they exist, they have been suspended or ignored. Weakness in cash flow adequacy has resulted in a greater appetite for risk in its investments. Investments are monitored irregularly and an external auditor deems there to be weakness or risk in cash handling and monitoring duties.

120. The debt management assessment evaluates if the utility has in place robust guidelines on the use of debt, excluding any covenant already established in its legal provisions. Examples include minimum savings thresholds for refunding bonds; stated preferences regarding final maturity, structure, and overall tenor of its debt, and the use of variable-rate debt, derivative products, floating-rate notes, or direct placement arrangements. If the debt instrument requires a financial institution counterpart, this assessment looks to any policies the utility may have regarding counterparty risk.

Table 28

Debt Management Policies Assessment	
<b>Strong</b>	Debt policies exist and are thorough and well-defined, even if they reflect or mimic state statutes. These policies are widely communicated and followed. While management has a general tendency toward risk-aversion, robust policies and sophistication among key finance officials make it likely that debt instruments that may require heightened levels of monitoring will make surprises a remote occurrence.
<b>Good</b>	Policies exist but may not address some key areas. In the absence of policies, management defers to state statutes that themselves are strong; some of the utility's financing obligations may be of the type that require a heightened level of monitoring, and management has some reliance on external consultants to help ensure remoteness of risks associated with those particular debt instruments.
<b>Standard</b>	Legal provisions and state laws are the sole guiding influences on management's use of and attitudes toward debt, or any internal guidelines are not meaningful beyond very basic or minimum debt management or are identified as unwritten goals.
<b>Vulnerable</b>	Absence of basic policies or clear evidence that basic policies are not being followed. Nontraditional financing options are utilized but there is no internalized knowledge, or utility management relies very heavily on consultants to monitor or manage the risk.

121. The transparency and accountability sub-factor assesses whether or not management has established for the independent review of important financial and operational data as well as the quality, regularity, and timeliness of its continuing disclosure practices, even for things that the utility may not be legally required to disclose. Even with annual audited financial statements produced according to GAAP, nonpublic disclosure of an alternative financing such as a direct placement arrangement would result in an assessment of 'vulnerable' for this sub-factor.

Table 29

Transparency And Accountability Assessment	
<b>Strong</b>	Management produces annual independently audited financial statements that comply with GAAP. Alternative financings and exposure to contingent risks are voluntarily disclosed as they are entered into, and overall continuing disclosure is deemed as robust and timely.
<b>Good</b>	Management produces annual independently audited financial statements that comply with GAAP. Alternative financings, exposure to contingent risks, and overall continuing disclosure are done, but generally only on an annual basis.
<b>Standard</b>	Management produces independently audited annual financial statements, but on a cash or other non-GAAP basis of presentation. Audits typically are released more than 180 days after fiscal year-end. The disclosure of alternative financings and contingent risk is not always timely but generally updated on an annual basis.
<b>Vulnerable</b>	Management produces independently audited financial statements, but cash or other non-GAAP basis of presentation is permitted. Audits typically are late or not produced each year. Regardless of frequency and quality of the audited financial statements, alternative financings and contingent risk are not voluntarily disclosed or overall continuing disclosure is poor and not timely.

## VIII. RELATED CRITERIA AND RESEARCH

### Related Criteria

- USPFCriteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- GeneralCriteria: Rating Government-Related Entities: Methodology And Assumptions, March 25, 2015
- Methodology: Master Limited Partnerships And General Partnerships, Sept. 22, 2014
- Country Risk Assessment Methodology And Assumptions, Nov. 19, 2013
- Ratings Above The Sovereign: Corporate And Government Ratings—Methodology And Assumptions, Nov. 19, 2013
- Key Credit Factors For The Regulated Utilities Industry, Nov. 19, 2013
- Corporate Methodology, Nov. 19, 2013
- GeneralCriteria: Methodology: Industry Risk, Nov. 20, 2013
- Timeliness Of Payments: Grace Periods, Guarantees And Use Of 'D' And 'SD' Ratings, Oct. 24, 2013.
- Local Government GO Ratings Methodology And Assumptions, Sept. 12, 2013.
- Criteria For Assigning 'CCC+', 'CCC', 'CCC-', And 'CC' Ratings, Oct. 1, 2012
- Contingent Liquidity Risks In U.S. Public Finance Instruments: Methodology And Assumptions, March 5, 2012
- Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- Methodology: Rating Approach To Obligations With Multiple Revenue Streams, Nov. 29, 2011
- Principles Of Credit Ratings, Feb. 16, 2011
- Stand-Alone Credit Profiles: One Component Of A Rating, Oct. 1, 2010
- Use Of Credit Watch And Outlooks, Sept. 14, 2009
- Rating Implications Of Exchange Offers And Similar Restructurings, May 12, 2009.
- Appropriation-Backed Obligations, June 13, 2007.
- Wholesale Utilities, May 24, 2005

### Related Research

- RFC Process Summary: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- Credit FAQ: An Overview Of Standard & Poor's Updated Methodology For Rating U.S. Public Finance Waterworks, Sanitary Sewer, And Drainage Utility Systems, Jan. 19, 2016
- Credit Rating Model: Water/Sewer Credit Scoring, Jan. 19, 2016
- Credit FAQ: All-In Coverage, Transfer Payments, And Credit Quality, Jan. 19, 2016
- Affordability As A Component Of U.S. Water And Sewer Utility Ratings, Jan. 19, 2016



- Management's Key For U.S. Water Utilities To Align Operations And Finances, Jan. 19, 2016
- The Broad And Diverse Economy Adjustment: 2015 Updated Scores For U.S. Metropolitan Statistical Areas Based On Local Government GO Criteria, Dec. 15, 2015
- 2014 Annual U.S. Public Finance Default Study And Rating Transitions, May 5, 2015
- Alternative Financing: Disclosures Critical To Credit Analysis In Public Finance, Feb. 18, 2014
- Credit FAQ: U.S. Public Finance Ratings And Criteria For Ratings Above The Sovereign, Dec. 19, 2013
- U.S. Public Finance Rating Characteristics, March 7, 2008

## IX. Appendix I: Glossary Of Key Terms

In our criteria, "utility" refers to a municipally-owned utility or other legally authorized political subdivision that provides raw and/or potable water, sanitary sewer, and/or drainage services at the retail level, or with wholesale (sales for resale) service not more than 49% of total operating revenues. The utility is most often, but not always, an enterprise within a larger general government, or an independent utility with its own governing board.

"Sewer", "sanitary sewer", and "wastewater" are used as interchangeable terms.

"Drainage", "stormwater", and "storm sewer" are used as interchangeable terms.

The following terms are based on the definitions provided in the article "Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations," published on Nov. 29, 2011:

### Other terms

*Annual required contribution:* The actuarially calculated amount that the utility (or its sponsoring plan provider) must make to completely fund its next associated payment on its pension and/or OPEB liability.

*Available reserves:* Unrestricted cash and equivalents plus any working capital that resides on the utility's balance sheet and is lawfully available for any purpose plus any undrawn capacity under committed lines of credit. Examples include emergency and contingency funds, rate stabilization reserves and other cash that may be designated in purpose but not restricted for debt service, fiduciary purposes, or asset retirement obligations.

*Contingent liabilities:* Variable-rate demand bonds, commercial paper, bullet payments due within five years, bonds with mandatory tender dates in five years or less, direct bank debt with acceleration clauses, the potential for a wholesale provider to reallocate its costs to the utility in an unbudgeted or otherwise unpredictable manner or the obligation is not based on an availability payment structure, swap or related termination payments if the current rating is two notches or less from the termination trigger, and other identifiable contingencies.

*Days' cash:* A measure of cash, investments and equivalents, calculated as follows:

**Numerator:** All unrestricted cash and equivalents plus any reserves that are designated, but ultimately available for any lawful purpose. May include long-term investments so long as they also have no restrictions and are not illiquid.

**Denominator:** 1/365th of income statement operating expenses. For operating expenses, depreciation, amortization, and other non-cash items, such as those that update a fair value on a derivative or pension obligation, are excluded.

Transfers are included in operating expenses.

*Debt to capitalization:* A measure of the relative leverage of the utility, as follows:

**Numerator:** The sum total of all short- and long-term debt both on the utility's balance sheet and that which is allocable to the utility, including draws on credit lines, commercial paper notes and other loans, debt or material obligations even if not rated by Standard & Poor's.

**Denominator:** The total debt as calculated in the numerator plus the utility's net position, which we view as public sector accounting's closest approximation of equity.

*Dependent population:* The total population of the service area that is younger than 15 years old plus the total population of the same area older than 65 years old.

*GAAP:* Generally accepted accounting principles are the common set of accounting principles, standards, and procedures that most governments and utilities in the U.S. follow. GAAP is determined by the Governmental Accounting Standards Board.

*Nonrevenue water:* As defined by the American Water Works Assn., the sum total of leaks, water that is incorrectly billed (whether because of an inaccurate meter or human error), theft, unbilled, and unmetered water such as that which is used for fire protection or line flushing, and unbilled but metered water such as water provided to schools or churches that because of local policy is provided free of charge.

*Off-balance sheet:* An obligation for which the utility is legally responsible, but which may appear only in the rated utility's financial statement notes, or another entity's balance sheet, but not within the long-term debt of the rated utility itself.

*Other postemployment benefits:* Health care, along with dental, vision, disability, long-term care, and life insurance benefits offered to qualified retirees of the utility.

*Self-supporting debt:* Debt is considered self-supported if the debt issued by the affiliated unit of government on behalf of the utility--such as a city issuing GO or special tax to fund projects for the betterment of its water system--is fully paid by practice from the utility's surplus net revenues. Full self-support means surplus net revenues must be at least as large as the principal and interest payments then due on that tax-secured debt.

*Tax-secured debt:* Debt that is secured by a full faith and credit general obligation pledge (whereby revenues are commonly derived by the levy of a property tax) or special tax--such as a local option sales tax or parcel tax.

## X. Appendix II: Municipal Rating Calibration

122. We calibrate our utility rating criteria based on our analysis of the history of defaults, the impact of changes in regulatory mandates over time, our view of the industry's essentiality, the industry's sensitivity to economic cycles, and the credit strength of this sector compared with that of other sectors.
123. Municipally-owned utilities and utility authorities are the monopolistic provider--naturally and often statutorily--of services to their defined customer base. We generally view them as having a business profile that is low in risk and does not stray from its core business of providing retail waterworks and/or sanitary sewer services. We have seen that the local decision-making body, such as the city council or utility board, is usually the one entity solely responsible for approving and implementing rate adjustments, as only a few states require municipal rates to be approved by a utility

regulatory body such as a public service commission. We do not view rate regulation as an impediment to credit quality unless there is clear evidence otherwise as measured by the timeliness and magnitude of requested versus approved rate cases. Municipal utilities, in our view, tend to operate on a cost recovery basis, not a rate-of-return model; any kind of return on investment usually comes in the form of a transfer payment to the general government, not a dividend derived from a profit margin.

124. Defaults and bankruptcy filings among U.S. municipal utilities are extremely rare. Of the 73 nonhousing defaults from 1986 through 2014 among all U.S. public finance issuers, only three (4%) were utilities. While rare, we observed that these defaults were associated with credit-specific characteristics such as weak financial management or a deterioration in the local utility or local government's financial condition, which are the most common indicators of distress.
125. Within U.S. public finance, water and sewer utilities currently comprise about 7% of Standard & Poor's total ratings. The federal courts' own data note, "In the more than 60 years since Congress established a federal mechanism for the resolution of municipal debts, there have been fewer than 500 municipal bankruptcy petitions filed." The vast majority of these were real estate-related special districts, sanitation entities, or industrial development authorities. The EPA's statistics show that there are over 50,000 community water systems in the U.S., about 85% of which are publicly owned. Therefore, we believe U.S. municipal utility defaults are infrequent. We do not expect a change in the historically extraordinarily low default rate in this sector. When there is a rapid deterioration, we do expect to continue to see multi-notch downgrades. Please see "The Time Dimension Of Standard & Poor's Credit Ratings", published Sept. 22, 2010, for a description of potential ratings migration.
126. This assumption is further supported by research, cited in "Local Government GO Ratings Methodology And Assumptions", published Sept. 12, 2013, that the broader historical rate of municipal defaults, dating back over a century in works by Hempel, Hillhouse et al, is extremely low.
127. While generally not rate-regulated, the U.S. municipal utility sector is still highly regulated. Water and sewer utilities are required to comply with numerous environmental regulatory standards at the federal and state levels to ensure public health and safety. The high level of regulation is, in our view, indicative of a public perception that utilities have an essential purpose. The regulatory framework, capital-intensive nature of utilities, and monopolistic nature preclude competition. However, this does not guarantee financial or operational performance. Failure to meet regulatory or environmental compliance could have larger implications and possibly impair credit quality. Our ratings are calibrated to seek a balance between our view that the sector is essential and the fact that each utility is not guaranteed to perform at a certain level.
128. The utility sector, in general, tends to have less susceptibility than other sectors to economic cycles due to the relatively price-inelastic nature of water and belief that sewer service is necessary for public health. We have observed that utilities derive nearly the entirety of operating revenues from local user charges and therefore are not beholden to flat growth in property tax bases or even year-over-year declines in local option sales tax revenues or cuts in state-shared programs. Operating revenues flow directly to the utility, not first to the sovereign central government (the U.S. federal government) or state government, and utility managers enjoy significant revenue, expense, and overall budgetary autonomy. Some local service areas have a principal utility customer that is also a key local or

regional employer, and the utility's financial health may sometimes rise or fall with the prospects of that employer. However, as measured by the number of metered accounts, most utility systems are disproportionately residential in nature, which often tends to create diversity among operating revenues regardless of where in a cycle the local economy is.

## **XI. Appendix III: An Overview Of The History Of Municipal Water Consumption And Billing In The U.S.**

129. Local and regional water conservation programs--both voluntary and mandatory--have for decades succeeded in reducing per capita per day consumptive use, especially in the South and West. Even the federal government, with the Energy Policy Act of 1992, established water-efficient standards for all indoor plumbing fixtures manufactured after 1994 (Section 123, Energy Policy Act of 1992. Public Law 102-486, 102nd Congress. Washington, D.C., Oct. 24, 1992). There is therefore no broadly applicable direct correlation between economic growth and system demands. However, economic fundamentals are still a critical proxy for the current and likely future ability of the customer base to support utility operations and its revenue requirements, as municipal utilities tend to derive nearly all operating revenues from the local rate base.
130. Regardless of the condition of the utility's service area economy, the relative ability of its customer base to pay the utility bill has remained important not only to credit quality but also to the sector itself. Both the EPA and the water utility industry's leading professional organization, the American Water Works Assn. (AWWA) have developed guidelines for measuring affordability.
131. AWWA's "Principles of Water Rates, Fees and Charges: Manual M-1 of Water Supply Practices (6th Edition, 2012)", often cited by the municipal utility industry as the definitive guide for rate studies, notes: "Unfortunately, it is neither economically practical nor often possible to determine the cost responsibility and applicable rates for each individual customer served" (page 75). For utilities, then, AWWA notes that the household is the base unit of measurement for virtually every component of a water utility, such as billing, pumping, water supply and capacity factors. The EPA also uses household, not per capita, income for measuring rate affordability.
132. As first discussed in section 1416(a)(1) of Public Law 93-523, commonly known as the Safe Drinking Water Act of 1974, a state which has primary enforcement powers may grant water systems an exemption from the SDWA "due to compelling factors (which may include economic factors)" The exemptions are not permanent and require the utility to demonstrate that it is unable to make the improvements to meet any such applicable regulatory requirements within a certain timeline and/or the service area is economically disadvantaged.
133. Such exemptions were more fully developed by the federal government with the 1986 and 1996 amendments to the SDWA. Around this same time, the EPA also developed its Interim Economic Guidance for Water Quality Standards Workbook, (EPA 823-B-95-002, March 1995), specifically section 4, and Combined Sewer Overflows--Guidance for Financial Capability Assessment and Schedule Development (EPA 832-B-97-004, February 1997), specifically section 3, to develop affordability criteria for sewer systems, including the residential indicator, which measures the annual utility burden as a percentage of median household income, and a number of additional secondary screening criteria

such as the local unemployment rate versus the national rate.

134. Because these affordability measures are generally accepted and used throughout the industry—even as we acknowledge they are only guidelines and targets—they are also used in our criteria. This methodology, however, is based on median household effective buying income since it better captures after-tax, disposable income, or take-home pay. EPA's secondary screening affordability criteria also take into account the household tax burden (Combined Sewer Overflows--Guidance for Financial Capability Assessment and Schedule Development (EPA 832-B-97-004; February 1997, pp. 32-36), so we view the approach as consistent.
135. It is common practice in the U.S. to measure retail billing units in volumes based either on per 1,000 gallons of water or per hundred cubic feet (ccf). Eight ccf's are equal to 5,984 gallons, or about 6,000 gallons. However, it is currently uncommon for a utility to measure billings in increments of per 500 gallons, so these criteria also round up to the closest equivalent.
136. Regardless of the unit of measurement used by the utility for billing purposes, it is common for there to be some variance between how much water the utility pumps into the system and how much actually gets billed. Most often this is due to leaks in the distribution or storage infrastructure, as well as aged or malfunctioning meters that underrepresent the actual volume of water used by that account. By the time the water leaves the treatment plant, the utility has incurred all the costs associated with that water, such as rights for the raw-water source and the treatment, transmission, and distribution expenses. The AWWA (as defined in its M-36 manual) uses an array of water resources as well as operational and performance indicators. Taken into account are both the volume of the losses and their cost impact. AWWA has stated that the most useful performance indicator for financial purposes is the nonrevenue water, with a financial measure characterized as the cost impact of all losses divided by total system operating costs. Standard & Poor's criteria uses as evidence nonrevenue water volume and cost, the quality and frequency of water system audits, and anecdotal evidence from management.
137. Utility billings and financial metrics can and often do vary from year to year for a variety of reasons, with the most common examples being:
- Weather—temperatures and precipitation patterns can cause a pronounced variance to annual usage and revenue in either a favorable or unfavorable direction, and no widely accepted normalizer exists in the sector, such as heating or cooling degree days in the electric sector;
  - Debt service schedule—utility's debt service payments are not always the same from year to year, and can and often do change very significantly into the future; and
  - Infrastructure investment requirements—capital spending needs, whether for growth, rehabilitation, or regulatory mandates, or to address short-term emergencies.

## **XII. Appendix IV: An Overview Of Irrigation Districts**

138. Irrigation districts are special districts that share a broad range of common features with other rated water districts; however, certain credit characteristics are materially different and therefore affect our evaluation of credit quality. In contrast to water utilities that primarily provide water for municipal and industrial uses, irrigation districts often have operations that are limited to the production and distribution of water supply for agricultural purposes. Customers of

these districts are predominantly farms of varying size for which the cost of water supply is one input into the production of agricultural goods ranging from cotton to almonds. In this context, the service area's income levels and unemployment rates are less meaningful, and we focus more broadly on the fact that the customer base is concentrated in a single industry--agriculture--that can be susceptible to unique risks such as poor weather conditions such as drought and frost, or pests, which may materially affect the ability of customers to pay their bills timely and in full.

139. Operationally, irrigation districts often provide a supplemental source of supply rather than a primary source of supply for customers. District activity typically focuses on the distribution of raw water with no treatment required since water is utilized by customers for agricultural production rather than potable consumption. Many, although not all, farms have private groundwater wells that serve as a source of supply, and the cost of water from this source is typically calculated based on the depth to groundwater in the aquifer, the electricity cost to operate pumps to produce the lift required to extract groundwater, and a nominal allocation of maintenance expense for the pumps. We believe that the availability of an inexpensive alternative water supply materially constrains an irrigation district's revenue raising flexibility since in the short term we anticipate that businesses will select the lowest cost of supply all else equal. Also, while irrigation districts often have some of the oldest established water rights to a given surface water source, others depend on contractual rights or permanent water rights to supply from large scale water projects--such as the U.S. Bureau of Reclamation's Central Valley Project or the California State Water Project--that may be subject to allocation methodologies that prioritize supply for municipal uses over agricultural uses due to public health concerns.
140. We have observed that limitations on sources of supply during drought periods may result in volatile debt service coverage patterns, including periods of insufficiency, that are generally inconsistent with the vast majority of rated water utilities and we view as a material credit weakness for this portion of the sector. Furthermore, while capital needs for irrigation districts are often limited to renewal and replacement of existing infrastructure, we have observed that irrigation districts may have unexpected and sizable capital needs for the acquisition of additional water rights or development of water banking capabilities--either internal capability development or participation in an external water bank--that make it very difficult to predict future capital spending patterns.

These criteria represent the specific application of fundamental principles that define credit risk and ratings opinions. Their use is determined by issuer- or issue-specific attributes as well as Standard & Poor's Ratings Services' assessment of the credit and, if applicable, structural risks for a given issuer or issuer rating. Methodology and assumptions may change from time to time as a result of market and economic conditions, issuer- or issue-specific factors, or new empirical evidence that would affect our credit judgment.

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## Memorandum

### Discussion Points – Surveillance Review of Westlands Water District

#### **Analyst Contacts:**

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#### **Information Requests**

- Documentation of the accounting transactions in fiscals 2010 and 2012 referenced in the SEC enforcement action dated March 9, 2016.
- The memos provided to Westlands' auditor in November 2009 describing the proposal to "reclassify cash reserves or retained earnings" to record additional revenue "in lieu of collecting current revenue while maintaining the required debt coverage ratio" as well as any memos to the auditor regarding the 2012 adjustment.
- Draft fiscal 2016 audit and fiscal 2017 operating budget, if available.
- Latest full debt service schedule (including the districts' subordinate lien debt service and loans and any off-balance sheet debt) from fiscal 2015 onwards including LOC fees.
- Latest swap mark-to-market.
- Latest rate study, 5-year financial projections and 5-year CIP.
- Latest month-end unrestricted cash and investment balance.

#### **Financials**

- We understand that the District's total operating revenues increased by 4% on a year-over-year basis between fiscals 2014 and 2015 despite a reduction in water sales. Can you please walk us through the District's rate structure and the offsetting revenues so we can better understand why operating revenues did not decline in tandem with water sales?
- Can you please provide a historical summary of the accounting treatment for the District's water sales revenues – please provide a cross-walk of the District's water rates and charges to the "Irrigation Water Sales" line item in the income statement - including revenues collected through (1) base rates and (2) land-based charges over the past 5 years.
- Why are the "cash receipts from water sales and related activities" in the cash flow statement so much higher (\$162.6 million) than the total operating revenues (\$124.3 million) in fiscal 2015?
- The fiscal 2015 audit lists \$13.1 million in non-operating revenue for "COP Repayment" - what is this for?
- We understand that the District's non-operating revenue increased 175% on a year-over-year basis, including a \$20.1 million gain on the sale of land. What was the land sale for?
- Are the District's cash receipts for land sales restricted or may they be used to fund operations?



- The fiscal 2015 audit indicates that the District's management believes that there is a potential uncollectible account for the year ended February 28, 2015. Accordingly, an allowance for doubtful accounts has been recorded in these financial statements. Can you elaborate on what this is for?
- We understand that in fiscal 2010 the District reclassified certain assets by credited customers' accounts and treated these assets as revenues. Is this the only year that this action occurred, or did this practice continue through fiscal 2015? Was this reclassification for pre-paid water costs, or other assets?
- To help us understand the reclassification of assets, please provide the balances for the District's pre-paid water costs at fiscal year-end for fiscals 2010 – 2015.
- We also understand that the District capitalized some of the cost of the preliminary costs associated with BDCP/Water Fix while in other years these expenses have been expensed. Can you please provide a summary of spending to date on Delta-related planning, and the dollar amount of costs capitalized or expensed over the past five years?
- Note D of the audit mentions that "Interest in water project represents the District's participation in the San Luis Delta-Mendota Authority's (SLDMWA) funding of the Department of Water Resources (DWR) water project that will increase the reliability of the District's water supply. If the project moves forward, DWR intends to issue bonds for financing. The project would provide a future benefit to the District." Is this related to the BDCP/Water Fix or other projects?
- Note F states "The District holds a promissory note secured by real property on a loan made to a management level employee. The notes' terms provides for principal and interest payments to be made on a semi-monthly basis and is due in full on or before August 31, 2021. At February 28, 2015, the balance due is \$1,456,687." What is this for?
- Note R indicates that \$342,826,021 in unpaid CVP capital was reflected on Reclamation's accounting records as the District's future capital obligations as of September 30, 2013, and this amount has not been accrued as an obligation on the District's financial statements. Is this obligation funded through the water rates or through a separate charge?
- Is there any off balance sheet debt? Direct purchase debt?

### **Legal/Environmental/Regulatory**

- Please provide a summary regarding the settlement of the drainage lawsuit.
- Please provide a status update on the interim renewal water service contract with the Bureau of Reclamation.
- Please provide an update on land subsidence within the service area. What measures are being taken within the region to address this concern?
- Is the District aware of any pending regulatory or environmental actions against it?

### **Operations**

- Does the District have a best case/worst case forecast for water supply and demand for the next couple years? Beyond 2017?
- What future rate increases are projected?
- What long-term water supply acquisitions are currently envisioned? How will these projects be funded?
- Does the District have a formal asset management program?
- What is the approximate percentage of non-revenue water from the system?

- Has the District performed any vulnerability assessments of its infrastructure (i.e., potential system impacts from climate change, natural disasters, man-made disasters, etc.)?
- Have there been any service interruptions during the past year?
- Have there been any fines or penalties during the past year?

### **Capital Improvement Program**

- How often is the CIP reviewed and updated?
- Does the District plan to issue any additional debt within the next 5 years?
- How is the District forecasting its share of Water Fix costs? What assumptions does the District utilize to forecast the impact of Water Fix on the customer base?

### **Planning and Policies**

- How often does the District review and update its long-term financial projections?
- Does the District have a formal succession plan for key staff?
- Does the District track intra-year budget vs. actuals and disclose it? If so, how often are they disclosed?

### **Miscellaneous**

- Is the District aware of any pending or threatened litigation against it?
- Is there any other information that the District believes Standard & Poor's should be aware of that has not already been discussed as part of this review?

**To:** Johnny Amaral[jamaral@westlandswater.org]  
**From:** Dan Pope  
**Sent:** Tue 7/12/2016 7:14:49 PM  
**Subject:** Fwd: Confidential: Notification of Fitch Rating Decision - Westlands Water District (CA)  
[Final release WWD\(CA\) July 2016.pdf](#)

## **FITCH REMOVES WESTLANDS WATER DISTRICT, CA WATER REVS FROM NEGATIVE WATCH; OUTLOOK TO NEGATIVE**

Fitch Ratings-Austin-12 July 2016: Fitch Ratings has affirmed the ratings on and removed from Ratings Watch Negative the following underlying ratings of the Westlands Water District, California (Westlands or the district):

--\$97.3 million revenue certificates of participation (COPs), series 2005A, 2007A, 2007B and 2008A, at 'AA-';

--\$22.1 million revenue COPs series 2008A (bank bonds) at 'AA-';

--\$74.2 million revenue refunding bonds series 2012A at 'AA-'.

In addition, Fitch has affirmed the ratings on and removed the Rating Watch Negative on the following San Luis & Delta Mendota Water Authority, CA (SLDMWA) bonds:

--\$29.8 million refunding revenue bonds (Delta Habitat Conservation and Conveyance Project), series 2013A, at 'AA-'.

The Rating Outlook is Negative.

### **KEY RATING DRIVERS**

**NEGATIVE WATCH REMOVED:** Fitch has removed the district's ratings from Negative Watch because it believes the actions taken by the Securities and Exchange Commission and the district mitigate the risk of future misrepresentations and omissions by the district relating to district financial results. Further, board adopted fixed-land based charges mitigate the risk of future revenue volatility.

**NEGATIVE OUTLOOK:** The Negative Rating Outlook is due to the potential for significant leveraging and additional drainage management responsibilities that would be assumed by the district following authorization of a drainage settlement (drainage settlement) with the United States. Authorization of the drainage settlement is pending U.S. Congressional approval.

**LARGEST WATER DISTRICT IN THE NATION:** Westlands is the largest water district by acreage in the nation, encompassing 614,700 acres in Fresno and Kings Counties in the San Joaquin Valley serving mostly agricultural irrigation needs. The district serves a highly concentrated agricultural user base that produces crops valued around \$1.5 billion annually.

**LOW ALLOCATIONS LEAD TO HIGHER COSTS:** Although the district has ample water entitlements [1.19 million acre feet (af) to serve regional irrigation need]), allocations of Central Valley Project (CVP) water can vary widely from year to year, driven by hydrology and environmental regulations. Unfavorably for the district, CVP allocations have been 5% or less annually since 2014, forcing the district to purchase more costly supplies elsewhere for its customers.

**SOUND FINANCIAL POSITION:** The district's financial position is generally stable following the adoption of fixed-rate land based charges in fiscal 2011. DSC on senior lien debt has been 1.6x

or higher since 2011. District cash balances have continued to climb, growing to over \$140 million for fiscal 2015, up from just \$40 million in fiscal 2010.

**WESTLANDS GUARANTY ON SLDMWA BONDS:** The rating on SLDMWA bonds reflects Westlands' obligation to pay 100% of debt service to the trustee. Westlands' is entitled to subsequent repayment from the other eight districts, which makes up about 20%, or approximate \$8 million, of the total obligation. SLDMWA obligation is paid as an operating expense by Westlands.

## **RATING SENSITIVITIES**

**ADDITIONAL LEVERAGE WITH DRAINAGE SETTLEMENT:** The rating would likely be downgraded if the U.S. Congress approves the drainage settlement with Westlands Water District due to significant debt likely to be required as part of the settlement, which could ultimately pressure the district's financial performance. If the drainage settlement agreement is not authorized, the Outlook would likely be moved to Stable based on the district's existing credit profile.

**LEVERAGE ON BEHALF OTHERS:** Additional debt taken on by the district on behalf of other agencies, such as the San Luis & Delta Mendota Water Authority, could further pressure district finances and lead to a rating downgrade.

## **CREDIT PROFILE**

### **RATING WATCH NEGATIVE REMOVED**

Following further discussions with the district, Fitch believes that the accounting reclassifications utilized in fiscal 2010 to meet the 1.25x rate covenant were isolated to that reporting period. Additionally, the board's adoption of a formal written policy for disclosure procedures coupled with the staff training related to disclosure procedures and responsibilities required under federal law are indicative of the district board and management's undertaking to provide more transparent financial disclosure going forward. Removal of the Rating Watch Negative is further supported by Fitch's belief that the adoption of fixed-rate land based charges starting in fiscal year 2011 help to mitigate the risk of future revenue volatility resulting from reduced CVP water allocations.

### **DRAINAGE SETTLEMENT COULD PRESSURE DISTRICT**

In September of 2015 the district entered into a settlement with the U.S. to resolve decades of litigation surrounding drainage issues within the district brought on by the district and various district landowners. The settlement, which has been signed by the U.S. and the district, still requires Congressional authorization. Fitch views favorably the district's receipt of a permanent water contract (albeit with a reduced delivery entitlement) and relief from \$295 million (present value) in obligations to the U.S. However, Fitch is concerned with the additional responsibilities taken on by the district for drainage management and the related costs and liability that could be incurred.

Low end estimates of costs associated with the drainage settlement are approximately \$400 million, which is double the current debt outstanding of the district and its obligation to repay bonds on behalf of the SLDMWA. High end estimates are closer to \$800 million, or four times the district's current outstanding obligations. The district is also required to permanently retire 100,000 acres of land (reducing the irrigable acreage by 17%) and compensate farmers in drainage affected parts of the district. The district currently owns about 90,000 acres of land and would look purchase or obtain non-irrigation covenants on the additional 10,000 acres. The district has about \$50 million set aside in a land and water reserve fund which could be used to offset the costs

related to the immediate implementation of some of the drainage settlement requirements, but would likely have to debt finance additional costs associated with completing the requirements.

## LARGE, UNIQUE IRRIGATION DISTRICT

Westlands is governed by a nine-member board of directors elected from district land owners and is responsible for district governance and policies. The district maintains full independent rate-setting authority as well as the ability to place a lien on property if water bills are unpaid. The district covers 614,700 acres in Fresno and Kings County on the west side of the San Joaquin Valley of which about 568,000 is irrigable. It is the largest irrigation district in the U.S. by acreage and responsible for administering the delivery of water from the United States Bureau of Reclamation (USBR) CVP.

## CONCENTRATION OF AGRICULTURAL CUSTOMERS

The district serves a small concentrated customer base comprised of approximately 700 connections for agricultural irrigation service and another 200 municipal and industrial connections. Irrigation water sales accounted for 80% of the district's operating revenues, land based charges 17% and municipal and industrial revenues accounted for just over 2% of operating revenues in fiscal 2015. Offsetting the ratepayer concentration risk somewhat is the high value of the cash crops farmed in the district (about \$2 billion in calendar 2015).

## 2015 FINANCIAL RESULTS BOOSTED BY LAND SALES

Financial results for fiscal 2015 were strong, boosted by \$22 million in additional non-operating revenues from the sale of land. Senior lien and all-in DSC, including land sale proceeds were 3.6x and 2.6x, respectively. Without the land sale proceeds, DSC would have still been healthy at 2.1x and 1.7x, respectively. The district budgets to achieve 1.25x DSC on senior lien debt and its rates are designed to cover the cost of water plus some operational expenses of the district. Management provided forecasts project senior lien DSC of 2.3x in fiscal 2016 supported by an additional \$6 million in land sales, before dropping to 1.4x for fiscals 2017 - 2020. Forecasts assume rates based on 0% CVP water allocations.

District cash continued an upward trend. Cash balances registered \$140 million in fiscal year 2015, up sharply from \$40 million in fiscal year 2010. Cash balances would likely decline somewhat when the drainage settlement is authorized as the district indicated utilizing some reserves to complete drainage settlement requirements.

## LOW CVP ALLOCATIONS RESULT IN HIGHER COST

District water is purchased from the USBR's CVP project and sold to users at prices designed to cover cost. CVP allocations have been minimal the last several years, with with 0% CVP allocation in 2014 and 2015 and just 5% in 2016. When allocations are low the district is forced to purchase supplemental water on the open market which can be costly.

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#### Applicable Criteria

Revenue-Supported Rating Criteria (pub. 16 Jun 2014)

[https://www.fitchratings.com/creditdesk/reports/report\\_frame.cfm?rpt\\_id=750012](https://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=750012)

U.S. Water and Sewer Revenue Bond Rating Criteria (pub. 03 Sep 2015)

[https://www.fitchratings.com/creditdesk/reports/report\\_frame.cfm?rpt\\_id=869223](https://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=869223)

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**To:** Tom Birmingham[tbirmingham@westlandswater.org]; 'Dan Pope'[dpope@westlandswater.org]; 'Philip Williams'[pwilliams@westlandswater.org]  
**Cc:** 'Doug Brown'[DBROWN@SYCR.com]; Houston, David[david.houston@citi.com]  
**From:** Bobbie Ormonde  
**Sent:** Mon 3/14/2016 10:16:21 PM  
**Subject:** FW: S&P Review of Westlands Water District  
[S&P Credit Watch Westlands 3-14-16.pdf](#)

FYI

---

**From:** Weil, Chloe [mailto:chloe.weil@standardandpoors.com]  
**Sent:** Monday, March 14, 2016 3:05 PM  
**To:** Bobbie Ormonde  
**Subject:** RE: S&P Review of Westlands Water District

Good afternoon—

As I mentioned on Friday, we placed the district on credit watch, pending the review, with a goal to complete the review by March 25<sup>th</sup>. I am attaching a copy of the rating action for your information.

Also, can you let me know the names of all of the attendees for the meeting on Friday? We will need to provide to our building security.

Thank you, we appreciate your time gathering the data for our review.

Best,  
Chloe



**Chloe Weil**  
Director, U.S. Public Finance Infrastructure Group

Standard & Poor's Ratings Services  
One California Street, 31<sup>st</sup> Floor, San Francisco, CA 94111  
T 415.371.5026 | F 415.371.5090  
[chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)  
[www.standardandpoors.com](http://www.standardandpoors.com)

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**From:** Bobbie Ormonde [<mailto:bormonde@westlandswater.org>]  
**Sent:** Friday, March 11, 2016 9:22 AM  
**To:** Weil, Chloe (Analytical)  
**Subject:** RE: S&P Review of Westlands Water District

Chloe,

We are in the process of gathering the data requested. As for the date of our meeting, I am awaiting availability of a few members of our team. I will get back to you today.

Bobbie Ormonde  
Director of Finance and Administration  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 93703  
(559) 241-6203

---

**From:** Weil, Chloe [<mailto:chloe.weil@standardandpoors.com>]  
**Sent:** Thursday, March 10, 2016 6:23 PM  
**To:** Brown, Douglas S.; Bobbie Ormonde  
**Cc:** Dyson, Paul  
**Subject:** S&P Review of Westlands Water District  
**Importance:** High

Good evening Bobbie –

As I previously indicated, we will be working on a full review of the rating on the District’s revenue bonds as a result of yesterday’s SEC enforcement action. We last conducted a full review of the District in relation to the May 2013 issuance by the San Luis & Delta–Mendota Water Authority of the series 2013A bonds.

I am attaching our rating report from 2013 as a point of reference, and I am sending an attached list of key questions for your consideration to help expedite our credit review. As you can see, the bulk of our questions relate to the accounting treatment of the adjustments made in 2010 and 2012, and making sure we understand each of the revenue items in the fiscal 2015 audit – but we are also focused on the District’s financial projections over the next five years.

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Finally, I am also including a copy of our new water/sewer criteria that we released in January.

Regards,

Chloe



**Chloe Weil**  
Director, U.S. Public Finance Infrastructure Group

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T 415.371.5026 | F 415.371.5090  
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**From:** Brown, Douglas S. [<mailto:DBROWN@SYCR.com>]  
**Sent:** Thursday, March 10, 2016 1:01 PM  
**To:** Weil, Chloe (Analytical)  
**Cc:** Bobbie Ormonde  
**Subject:** WWD

Chloe,

Per our conversation:

Bobbie Ormonde

District Director of Finance & Administration

[bormonde@westlandswater.org](mailto:bormonde@westlandswater.org)

(559) 241-6203

**Douglas S. Brown**  
**Stradling**  
Attorneys at Law

Stradling Yocca Carlson & Rauth, P.C.  
500 Capitol Mall, Suite 1120 | Sacramento, CA 95814  
660 Newport Center Drive, Suite 1600 | Newport Beach, CA 92660  
(c) 949.500.0855

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## Summary:

San Luis & Delta-Mendota Water  
Authority, California  
Westlands Water District; Joint  
Criteria; Water/Sewer

### Primary Credit Analyst:

Chloe S Weil, San Francisco (1) 415-371-5026; [chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)

### Secondary Contact:

James M Breeding, Dallas (1) 214-871-1407; [james.breeding@standardandpoors.com](mailto:james.breeding@standardandpoors.com)

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Related Criteria And Research

## Summary:

# San Luis & Delta-Mendota Water Authority, California

## Westlands Water District; Joint Criteria; Water/Sewer

Credit Profile		
WestlandsWtr Dist (WestlandsWtr Dist) JOINTCRIT		
LongTermRating	AAA/A-1/Watch Neg	Current
UnenhancedRating	A+(SPUR)/Watch Neg	On CreditWatch Negative
Westlands Wtr Dist wtr & swr		
UnenhancedRating	A+(SPUR)/Watch Neg	On CreditWatch Negative

## Rationale

Standard & Poor's Rating Services placed the following ratings on CreditWatch with negative implications:

- 'A+' long-term rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes; and
- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs).

The CreditWatch placements follow the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Securities Exchange Commission (SEC) with the district, which charged key management staff with misleading investors about the district's financial condition. Prior to the SEC's action, Standard & Poor's was not aware of the district's extraordinary accounting transactions that were the subject of the proceeding.

Resolution of the CreditWatch placement is dependent on our ability to obtain timely information of satisfactory quality to maintain our rating on the securities in accordance with our applicable criteria and policies. Failure to receive the requested information by March 25, 2016 will likely result in our suspension of the affected rating, preceded, in accordance with our policies, by any change to the rating that we consider appropriate given available information.

## Related Criteria And Research

### Related Criteria

USPFCriteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016

USPFCriteria: Methodology: Definitions And RelatedAnalytic PracticesFor CovenantAnd PaymentProvisionsIn  
U.S.Public FinanceRevenueObligations, Nov. 29, 2011

USPFCriteria: AssigningIssueCredit RatingsOf Operating Entities, May 20, 2015

Criteria: Use of CreditWatch And Outlooks, Sept. 14, 2009

Ratings Detail (As Of March 14, 2016)		
WestlandsWtr Dist wtr & swr (AGM)		
<i>Unenhanced</i> Rating	A+(SPUR)/Watch Neg	On CreditWatch Negative
Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced</i> Rating	A+(SPUR)/Watch Neg	On CreditWatch Negative
San Luis & Delta-Mendota Wtr Auth, California		
WestlandsWtr Dist, California		
SanLuis & Delta-Mendota Wtr Auth (WestlandsWtr Dist) (BAM)		
<i>Unenhanced</i> Rating	A+(SPUR)/Watch Neg	On CreditWatch Negative
Many issuesare enhancedby bond insurance.		

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of Ratings Direct at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

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**To:** Bobbie Ormonde[bormonde@westlandswater.org]  
**From:** Tom Birmingham  
**Sent:** Tue 3/15/2016 1:33:37 AM  
**Subject:** Re: S&P Review of Westlands Water District

Bobbie,  
I will attend the Friday meeting.  
Tom

Sent from my iPhone

On Mar 14, 2016, at 3:16 PM, Bobbie Ormonde <[bormonde@westlandswater.org](mailto:bormonde@westlandswater.org)> wrote:

FYI

---

**From:** Weil, Chloe [<mailto:chloe.weil@standardandpoors.com>]  
**Sent:** Monday, March 14, 2016 3:05 PM  
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**Subject:** RE: S&P Review of Westlands Water District

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<image001.jpg>

**Chloe Weil**  
Director, U.S. Public Finance Infrastructure Group

Standard & Poor's Ratings Services  
One California Street, 31<sup>st</sup> Floor, San Francisco, CA 94111  
T 415.371.5026 | F 415.371.5090  
[chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)  
[www.standardandpoors.com](http://www.standardandpoors.com)

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Bobbie Ormonde  
Director of Finance and Administration



Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 93703  
(559) 241-6203

---

**From:** Weil, Chloe [<mailto:chloe.weil@standardandpoors.com>]

**Sent:** Thursday, March 10, 2016 6:23 PM

**To:** Brown, Douglas S.; Bobbie Ormonde

**Cc:** Dyson, Paul

**Subject:** S&P Review of Westlands Water District

**Importance:** High

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Chloe

<image001.jpg>

**Chloe Weil**

Director, U.S. Public Finance Infrastructure Group

Standard & Poor's Ratings Services  
One California Street, 31<sup>st</sup> Floor, San Francisco, CA 94111  
T 415.371.5026 | F 415.371.5090  
[chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)  
[www.standardandpoors.com](http://www.standardandpoors.com)

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**From:** Brown, Douglas S. [<mailto:DBROWN@SYCR.com>]

**Sent:** Thursday, March 10, 2016 1:01 PM

**To:** Weil, Chloe (Analytical)

**Cc:** Bobbie Ormonde

**Subject:** WWD

Chloe,

Per our conversation:

Bobbie Ormonde  
District Director of Finance & Administration  
[bormonde@westlandswater.org](mailto:bormonde@westlandswater.org)  
(559) 241-6203

**Douglas S. Brown**  
<image002.png>

Stradling Yocca Carlson & Rauth, P.C.  
500 Capitol Mall, Suite 1120 | Sacramento, CA 95814  
660 Newport Center Drive, Suite 1600 | Newport Beach, CA 92660  
(c) 949.500.0855  
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<S&P Credit Watch Westlands 3-14-16.pdf>

**To:** dciapponi@westlandswater.org[dciapponi@westlandswater.org]  
**Cc:** Tung, Tim[tim.tung@standardandpoors.com]; jonathan.a.ash@citi.com[jonathan.a.ash@citi.com]  
**From:** Suzuki, Satomi  
**Sent:** Fri 5/17/2013 9:55:52 PM  
**Subject:** S&P Rating Letter & Report - Westlands Water District  
[Westlands Water District Rating Letter.pdf](#)  
[Westlands Water District Report.pdf](#)

Hello,

Please find the rating letter and report for the transaction above attached to this email. Should you have any questions or concerns regarding the contents of the report, please contact the primary analyst listed in the report. If you need any further assistance, please feel free to contact me.

Thank you for choosing Standard & Poor's.

Regards,

**Satomi Derrick Suzuki**

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U.S. Public Finance Ratings  
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[satomi\\_suzuki@standardandpoors.com](mailto:satomi_suzuki@standardandpoors.com)  
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## Summary:

San Luis & Delta-Mendota Water  
Authority, California  
Westlands Water District; Joint  
Criteria; Water/Sewer

### Primary Credit Analyst:

Tim Tung, San Francisco (1) 415-371-5041 [tim.tung@standardandpoors.com](mailto:tim.tung@standardandpoors.com)

### Secondary Contact:

Paul J Dyson, San Francisco 415-371-5079 [paul.dyson@standardandpoors.com](mailto:paul.dyson@standardandpoors.com)

## Table Of Contents

Rationale

Outlook

Related Criteria And Research

## Summary:

# San Luis & Delta-Mendota Water Authority, California

## Westlands Water District; Joint Criteria; Water/Sewer

Credit Profile		
US\$40.87mil rfdg rev bnds (WestlandsWtr Dist) ser 2013A due 03/01/2043		
LongTermRating	A+/Stable	New
Westlands Wtr Dist wtr & swr		
UnenhancedRating	A+(SPUR)/Stable	Affirmed

## Rationale

Standard & Poor's Ratings Services assigned its 'A+' long-term rating to San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds (DHCCP Development Project). At the same time, we affirmed our 'A+' long-term rating on the authority's series 2009A revenue notes and our 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s revenue bonds and certificates of participation (COPs). The outlook on all ratings is stable.

We also affirmed our 'AAA/A-1+' rating on the district's series 2008A adjustable-rate refunding revenue COPs. The long-term component of the rating reflects the combination of the district's creditworthiness and credit enhancement in the form of a letter of credit (LOC) provided by Rabobank N.A. (not rated) and a confirming LOC provided by Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (Rabobank Nederland), New York Branch (AA-/Stable/A-1+). This rating is based on Standard & Poor's joint criteria assuming a low credit correlation between the obligor and the LOC providers. Furthermore, the short-term component of the rating is based on the liquidity support provided by the LOCs.

The ratings reflect our view of the district's:

- Large and agriculturally diverse service area;
- Rate structure that collects half of the district's operations and maintenance (O&M) expenses through water rates and half through land-based charges, which enhances revenue stability;
- Debt service coverage (DSC) that is projected to range from adequate to good during the next four fiscal years; and
- Strong cash reserves.

In our view, these strengths are partially offset by the district's:

- Dependence on volatile water allocations from the U.S. Bureau of Reclamation's (USBR) Central Valley Project (CVP),

- Anticipated need for significant additional leverage to finance its share of upcoming projects related to the Delta Habitat Conservation and Conveyance Project (DHCCP),
- Small agricultural customer base of 700 customers over which to spread fixed costs, and
- Adequate total DSC when taking into consideration the district's subordinate 1965 contract payments to USBR.

We understand that the 2013A bonds are being issued to refund a portion of the authority's 2009A revenue notes.

We view the bond provisions as adequate. The bonds are secured by authority revenues, which consist of payments under activity agreements by the member agencies participating in the financing. However, we understand that Westlands Water District is obligated under its activity agreement to pay 100% of principal and interest when due, and that the district is reimbursed from authority revenues as participating member agencies make payments to the authority. Therefore, our analysis focuses solely on the district although the district's allocable share of the 2013A bonds' debt service is about 82%. The district's activity agreement payments are treated as a district operating expense, and the payments are senior in priority to the district's obligations with respect to its bonds and COPs. We understand that a debt service reserve is expected to be funded from bond proceeds and provide additional liquidity for the 2013A bonds.

The district was formed in 1952 under the California Water District Law to furnish irrigation water and drainage service to farmers within the district's boundaries. Located on the west side of the San Joaquin Valley, the district's service area spans 614,700 acres of level agricultural land in Fresno and Kings counties, 568,500 acres of which are irrigable. The overall customer base is small, at about 700 water users, and consists of larger farms that average 800 to 900 acres in size. These farms produce 60 different crops including cotton, tomatoes, pistachios, cantaloupes, lettuce, almonds, and onions. Permanent crops accounted for about 18% of total irrigable acreage and 30% of crop value in calendar year 2011, the most recent year for which data are available. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district. We consider the customer base to be very diverse based on the leading 10 customers paying about 10.4% of total operating revenues, and no customer paying more than about 3.5% of total operating revenues. The district operates and maintains a very water-efficient underground piped distribution system through which all deliveries to water users are measured by reading flow meters twice a month.

The district's primary water source is surface water supplied through the USBR's CVP. The initial 1963 contract between the district and USBR specified a 900,000 acre-feet contract water entitlement that was subsequently increased to 1.15 million acre-feet. The agreement expired at the end of 2007, and the district and USBR entered into an Interim Renewal Contract (IRC) that has been twice extended to the current termination date on Feb. 28, 2014. Before entering into a new long-term agreement, USBR is required to complete certain environmental reviews, and district management does not believe that these environmental reviews will likely be completed prior to the current IRC expiration date. Management has requested a renewal of the IRC and anticipates that it will be renewed again under substantially the same terms and conditions prior to the current expiration date. The district's total water demand exceeds its CVP contract water entitlement, and additional water supply is provided through supplemental water purchases and groundwater pumping. Due to significant variations in California hydrology, CVP allocations have varied widely, ranging from 10% to 100% of contract entitlement, and the allocation for fiscal year 2014 is currently 20%.

Operating revenues are generated through water sales and acreage charges. We understand that the district's water rates are set annually to pass through all water purchase costs and also recover half of the district's O&M costs. The balance of O&M costs are recovered through acreage charges. We view this structure as prudent given the significant variation in water sales and the volatility of CVP water allocations. Payment for water and power is due monthly by the 25th day following the month end of use, and no further water deliveries are made if payments are not received when due. If monthly payments are not made, amounts due may be added to the annual acreage charges. Water rates may be changed midyear if the water supply situation changes after the start of the fiscal year, which runs from March to February. Rate changes are subject to Proposition 218, but management reports that the district has historically faced minimal resistance to rate changes from land owners -- the most significant protest was a mere 2% of the eligible votes by acreage.

We understand that there are significant potential capital expenses related to the Bay Delta Conservation Plan and the DHCCP although there are no significant capital needs within the district at this time. A record of decision is anticipated in early 2014, after which Phase I of the DHCCP may proceed with design and engineering work that is estimated to cost about \$1.8 billion. Construction of the project (Phase II) is scheduled to commence in 2017 and continue over a 10-year period at an estimated cost of \$13.0 billion. Management currently anticipates participating in Phase I of the DHCCP, although a decision has not yet been made and management continues to monitor project planning and development. If the district decides to participate in Phase I, we understand that financing arrangements may be considered as early as 2014. We understand that the cost of the project will be shared between the state participants and the federal participants, and that the district's share of the federal portion is estimated to be about 25%.

The district's financial performance has been predominantly strong since 1993, in our view, but financial performance is subject to thinner margins during drought years. For example, in fiscal year 2010 the CVP allocation was just 10% of water contract entitlements, and coverage of the district's activity agreement payments and senior debt obligations was good, in our view, at 1.25x. At the same time, the district's total DSC, which includes subordinate contract capital repayments to USBR, narrowed to just 1.0x, which we consider marginally adequate. The district's financial performance improved the following year driven primarily by increased water availability due to wet weather. In fiscal years 2011 and 2012, coverage of activity agreement payments and senior debt obligations was 1.69x and 1.59x, respectively, while total DSC was 1.38x and 1.31x, respectively. Based on unaudited fiscal year 2013 results, we calculate coverage of activity agreement payments and senior debt obligations of 1.32x and total DSC of 1.08x. Weaker performance for the year was driven primarily by lower water sales. During the next four fiscal years, based on management's projections that assume a 40% allocation of the district's contract water entitlement, we calculate coverage of activity agreement payments ranging from 5.44x to 9.06x, while coverage of both activity agreement payments and senior debt obligations ranges from 1.22x, which we consider adequate, to 1.40x, which we consider good. During the same period, we calculate total DSC ranging from 1.02x to 1.15x, both of which we consider adequate.

The district is also a party to a LIBOR-based interest rate swap agreement with a notional amount of \$25.5 million and a mark-to-market value of negative \$3.6 million as of Feb. 28, 2013. The swap agreement was initially entered into in conjunction with the issuance of the 2005 BCOPs with the intent to synthetically fix the interest rate on those

certificates. The 2005B COPs were subsequently refunded with the 2008A COPs, and the interest rate swap is now associated with the 2008A COPs.

The district's liquidity position is strong, in our view. The district's cash and cash equivalents at the end of fiscal year 2012 was \$69.9 million, which represented 222 days of operating expenses; however, we understand that a portion of this balance is restricted and that the unrestricted portion was \$45.6 million, or 145 days, which we also consider strong. Based on unaudited results, management reports cash and cash equivalents at the end of fiscal year 2013 increased to about \$90.9 million, and management attributes the change in cash position primarily to increased prepayments by water users (\$7 million) and deferred revenue for supplemental water (\$7 million). We understand that the district maintains a strong liquidity position in part to enable it to opportunistically acquire water rights or otherwise firm up its water supply.

## Outlook

The stable outlook reflects our view of the district's role as the sole provider of supplemental water to a very large agricultural area that lacks adequate local water supply to meet demand. During the two-year outlook period, we anticipate that a record of decision will be entered regarding the DHCCP, and that financing arrangements related to Phase II of the DHCCP will be finalized. We could lower the rating if increased leverage is not balanced by rate increases that are adequate to maintain existing margins and financial performance, or if liquidity is significantly drawn down as a financing source. We could raise the rating if the district operates with significantly wider margins on a sustained basis or is able to materially enhance water supply stability.

## Related Criteria And Research

- USPFCriteria: Key Water And Sewer Utility Credit Ratio Ranges, Sept. 15, 2008
- USPFCriteria: Standard & Poor's Revises Criteria For Rating Water, Sewer, And Drainage Utility Revenue Bonds, Sept. 15, 2008
- U.S. State And Local Government Credit Conditions Forecast, April 4, 2013

Ratings Detail (As Of May 17, 2013)		
Westlands Wtr Dist adj rate rfdg rev COPs ser 2008A		
Long Term Rating	AAA/A-1+	Affirmed, Removed from Credit Watch
Unenhanced Rating	A+(SPUR)/Stable	Affirmed
Westlands Wtr Dist wtr & swr (AGM)		
Unenhanced Rating	A+(SPUR)/Stable	Affirmed
Westlands Wtr Dist Wtr & Swr rev certs of part		
Unenhanced Rating	A+(SPUR)/Stable	Affirmed
San Luis & Delta-Mendota Wtr Auth, California		
Westlands Wtr Dist, California		
San Luis & Delta-Mendota Wtr Auth (Westlands Wtr Dist) rev nts (Dhccp Dev Proj) ser 2009A		
Long Term Rating	A+/Stable	Affirmed



**Ratings Detail (As Of May 17, 2013) (cont.)**

Many issues are enhanced by bond insurance.

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May 16, 2013

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Dave Ciapponi, Assistant General Manager

Re: *US\$40,870,000 San Luis & Delta-Mendota Water Authority, (Westlands Water District), California, Refunding Revenue Bonds, Series 2013A, dated: Date of delivery, due: March 01, 2043*

Dear Mr. Ciapponi:

Pursuant to your request for a Standard & Poor's Ratings Services ("Ratings Services") rating on the above-referenced obligations, Ratings Services has assigned a rating of "A+". Standard & Poor's views the outlook for this rating as stable. A copy of the rationale supporting the rating is enclosed.

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A handwritten signature in black ink that reads "Standard & Poor's". The signature is written in a cursive, flowing style.

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cc: Mr. Jonathan Ash, Associate  
Citi | Municipal Securities Division



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**Sent:** Mon 3/28/2016 2:36:06 PM  
**Subject:** FW: Standard & Poor's Press Release  
[Press Release Westlands Outlook Change.pdf](#)

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**From:** info@westlandswater.org [mailto:info@westlandswater.org]  
**Sent:** Friday, March 25, 2016 5:12 PM  
**Subject:** Standard & Poor's Press Release

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## Westlands Water District, CA Ratings Removed From CreditWatch, Affirmed After Our Query Into SEC Enforcement Action

**Primary Credit Analyst:**

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SAN FRANCISCO (Standard & Poor's) March 25, 2016--Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs); and
- 'A+' long-term rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, issued for Westlands Water District.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch with negative implications on March 14, 2016, following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Security Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's



extraordinary accounting transactions that were the subject of the proceedings.

"Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as 'vulnerable' and will continue to monitor the district's continuing disclosure practices," said Standard & Poor's credit analyst Chloe Weil. "However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We further believe the district's present financial position remains comparable to that of its peers at the present rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon," Ms. Weil added.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

#### RELATED CRITERIA AND RESEARCH

##### Related Criteria

- USPF Criteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- USPF Criteria: Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- USPF Criteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- Criteria: Use of CreditWatch And Outlooks, Sept. 14, 2009

##### Related Research

- U.S. State And Local Government Credit Conditions Forecast, Jan. 11, 2016
- U.S. Municipal Water And Sewer Utilities 2014 Sector Outlook: Learning To Do More With Less, Jan. 9, 2014

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**To:** bormonde@westlandswater.org[bormonde@westlandswater.org]  
**Cc:** CLek@sco.ca.gov[CLek@sco.ca.gov]; ELoste@sco.ca.gov[ELoste@sco.ca.gov]  
**From:** MCheng@sco.ca.gov  
**Sent:** Thur 10/6/2016 11:29:24 PM  
**Subject:** RE: Westlands Review

Hi Bobbie,

Can we schedule an entrance conference on October 24, 2016? We will go over in greater detail our objectives and scope. We understand you all are very busy at the moment so if we can start with just a review of the policies and procedures and the general ledger we would not burden your staff as much. We would greatly appreciate it.

Thanks,  
Michael

---

**From:** Bobbie Ormonde [mailto:bormonde@westlandswater.org]  
**Sent:** Wednesday, October 05, 2016 3:54 PM  
**To:** Cheng, Michael <MCheng@sco.ca.gov>  
**Cc:** Lek, Christopher <CLek@sco.ca.gov>; Loste, Efren <ELoste@sco.ca.gov>  
**Subject:** RE: Westlands Review

Michael,

Dan Pope, Westlands' Chief Operating Officer, and I just left you a message regarding the Westlands Review. When you are back in the office, please call me. We have a few questions regarding the review and we can discuss scheduling the review.

Also, will the State Controller's Office be sending a written notification to the District regarding this matter?

Bobbie Ormonde  
Director of Finance and Administration  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 93703-6056  
(559) 241-6203

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**From:** [MCheng@sco.ca.gov](mailto:MCheng@sco.ca.gov) [<mailto:MCheng@sco.ca.gov>]  
**Sent:** Monday, October 3, 2016 11:44 AM  
**To:** [bormonde@westlandswater.org](mailto:bormonde@westlandswater.org)  
**Cc:** [CLek@sco.ca.gov](mailto:CLek@sco.ca.gov); [ELoste@sco.ca.gov](mailto:ELoste@sco.ca.gov)  
**Subject:** Westlands Review

Hi Bobbie,

This is Michael, the auditor from the State Controller's Office. This is a follow-up email regarding the scheduling of an internal control review of the Westlands Water District. I CC'ed my managers.

As discussed over the phone, we might be able to start near the end of October. Let me know when we can finalize the date. We anticipate completing the fieldwork in approximately six to eight weeks.

Our review will include an analysis of the administrative and internal accounting controls and fiscal management of the district and will focus on the period of March 1, 2013, through February 28, 2015; however, if issues come to our attention, we may expand our work to include prior and/or current periods.

The review will be conducted under the Government Code section 12410 which requires the Controller to "...superintend the

fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment.”

Additionally, Government Code section 12891.2 grants the Controller the authority to audit the books and records of public agencies receiving loans or grants for local water projects.

Please contact me if you have any questions. We look forward to working with you.

Thanks,

***Michael Cheng, CPA***

Audit Specialist

State Controller's Office

Division of Audits - Local Government Audits Bureau

(916) 322-5235 | [mcheng@sco.ca.gov](mailto:mcheng@sco.ca.gov)

**To:** 'Chuck Gardner'[cgardner@hgcpm.com]  
**From:** Tom Birmingham  
**Sent:** Tue 4/5/2016 4:01:06 PM  
**Subject:** S&P Revised Outlook  
[Westlands Water District S&P Report 2016 Review.pdf](#)

Chuck,  
Attached is the S&P analysis I mentioned.  
Tom

# RatingsDirect®

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## Summary:

Westlands Water District, California  
San Luis & Delta-Mendota Water  
Authority; Joint Criteria; Water/Sewer

### Primary Credit Analyst:

Chloe S Weil, San Francisco (1) 415-371-5026; [chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)

### Secondary Contact:

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Westlands Wtr Dist, California		
San Luis & Delta-Mendota Wtr Auth (Westlands Wtr Dist) (BAM)		
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## Rationale

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- 'A+' rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, of which Westlands Water District is the guarantor.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Securities and Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1.0x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's extraordinary accounting transaction that were the subject of the proceedings. Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as "vulnerable" and will continue to monitor the district's continuing disclosure practices. However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We believe the district's current financial position remains comparable to that of its peers at the current



rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon.

The ratings further reflect our assessment of the district's:

- Strong market position as the sole provider of irrigation water in a diverse agricultural area;
- Revised rate structure that enhances revenue stability despite significant increases in supplemental water supply costs and fluctuations in water deliveries from the U.S. Bureau of Reclamation's Central Valley Project (CVP);
- Significant progress on the decades-long dispute with the Bureau of Reclamation regarding drainage-impaired soils in the service territory, although the legal settlement remains subject to congressional approval; and
- Future challenges associated with the procurement of additional raw water sources over the long-term horizon.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The valley has been farmed with irrigation water in varying degrees for approximately half a century, and could not exist on its current scale without major water infrastructure programs such as the CVP. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable, and produces high-value permanent crops, such as almonds and pistachios, as well as tomatoes, grapes, and cantaloupes. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

Water sales and purchased water costs are the district's primary revenue sources and expenses. The main water source comes from a 1.195 million acre-foot contract entitlement with the U.S. Bureau of Reclamation's CVP. The district serves as the leading provider of imported water to the region. Supply mix can vary significantly from year to year based on CVP allocations, which are driven by hydrology. The annual safe yield of the confined underground aquifer adds another 200,000 acre-feet and local farmers generally extract as much groundwater as possible, but CVP allocations and groundwater supplies have long been inadequate to meet the region's water demand, which is approximately 1.2 million acre-feet. Accordingly, the district is continually engaged in efforts to supplement its water supply from outside sources. In recent years, the district has provided between one-half and two-thirds of all water consumed in the service area through higher-cost supplemental purchases.

As the district's financial performance is hydrology-dependent, the district performs robust financial forecasting and is proactive in maintaining relationships with other water districts and key stakeholders to ensure adequate water transfers, and to that end has been adept at securing regulatory approvals to receive supplemental water.

Weather-normalized, formal historic trend analysis is performed and updated annually for both revenue and expenses; and we believe regular efforts are made to determine whether one or more factors will cause revenues or expenses to deviate from their long-term trends over the next few years. In addition, beginning in fiscal year 2011, to help alleviate the burden on water users for the increased cost of water in short water supply years, the district's board elected to collect half of the operations & maintenance charges through a land-based charge to landowners rather than through the water rate.

On Sept. 15, 2015, the U.S. Department of Justice and Westlands approved a settlement ending a decades-long dispute over the Bureau of Reclamation's responsibility to provide drainage for the farmland within Westlands. The drainage

settlement requires Westlands to assume full responsibility for drainage management within its boundaries, and will cap CVP deliveries at 75% of the district's contract entitlement. Furthermore, Westlands will be required to retire a minimum of 100,000 acres of land and to repurpose the non-irrigated lands for environmentally friendly uses. We view the settlement as manageable as the district has already acquired 90,000 acres of land for this purpose. The district also has over \$40 million in designated reserves that could be used to meet the remaining requirements under the settlement.

The district's financial performance has been sound in our view over the past five years, despite the impact of the ongoing drought on the district's water supply. Senior lien debt service coverage (DSC) improved to 2.1x in fiscal 2015 from 1.8x in fiscal 2014, while all-in DSC, which adjusts for the district's fixed charges included in operating expenses, the district's subordinated lien obligations, and the impact of one-time land sales on revenues, improved to 1.6x from 1.2x, which we consider good. Based on unaudited results, we expect all-in DSC in fiscal 2016 to remain strong, at about 1.7x, excluding one-time land sales. Based on management's forecast, we expect all-in DSC to decline to about 1.0x in fiscal 2017, which we consider adequate at the current rating level. With a debt-to-capitalization ratio of about 55% as of February 28, 2015, we consider the district to be moderately leveraged.

The district's liquidity position is strong, in our view. The district's cash and cash equivalents as of Feb. 29, 2016 (unaudited) was \$102 million, which represented 314 days' of operating expenses. We understand that the district maintains a strong liquidity position, in part to enable it to opportunistically acquire water rights or otherwise firm up its water supply.

The proposed California WaterFix (the revised approach to the Bay Delta Conservation Plan), a comprehensive plan for the Bay-Delta to address environmental and water supply issues, if adopted and implemented, would entail substantial infrastructure investment in the Delta and implementation of other conservation measures. The capital costs associated with this project will likely be large--most recently estimated at \$14.6 billion, and the district estimates that its proportionate share would be about \$2.4 billion. However, we recognize that the method for financing the project has not been established, and the district has no obligation to fund these future costs. However, we believe that substantial increases in the district's land-based charges and CVP water rates will be necessary to cover the district's (yet to be determined) share of the planned Bay Delta improvements. Even so, we believe that the CVP water may remain the district's lowest cost source of water, and is critical to support the region's agricultural output.

## Outlook

The stable outlook reflects our view of the district's competitive position as the leading provider of supplemental water to a region with strong water demand and scarce water resources. During the two-year outlook period, we anticipate that the district will continue to sustain its good coverage metrics and extremely strong liquidity position while managing its water supply. We also expect the district to finalize its plans regarding the drainage settlement and that the district currently has ample capital funding capacity to execute the requirements under the agreement.

### Upside scenario

Although not anticipated, due to the district's service territory characteristics and potential shifts in the water supply portfolio, we may raise the ratings if the district is able to stabilize and sustain strong coverage metrics and if the local

service economy strengthens and diversifies such that its characteristics are comparable to those of peers at a higher rating level.

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We may lower the ratings if changes to the water supply portfolio or unexpected capital needs cause the district's financial metrics to materially erode.

## Related Criteria And Research

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Ratings Detail (As Of March 28, 2016)		
Westlands Wtr Dist wtr & swr (AGM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
Westlands Wtr Dist (Westlands Wtr Dist) JOINT CRIT		
<i>Long Term Rating</i>	AAA/A-1	Current
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

Many issues are enhanced by bond insurance.

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of Ratings Direct at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

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**To:** Jon Rubin[Jon.Rubin@sldmwa.org]; 'Frances Mizuno'[frances.mizuno@sldmwa.org]  
**From:** Dan Pope  
**Sent:** Tue 3/29/2016 11:33:38 PM  
**Subject:** FW: S&P Revised Outlook  
[Westlands Water District S&P Report 2016 Review.pdf](#)

For your information and use. Westlands will file on EMMA.

# RatingsDirect®

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## Summary:

Westlands Water District, California  
San Luis & Delta-Mendota Water  
Authority; Joint Criteria; Water/Sewer

### Primary Credit Analyst:

Chloe S Weil, San Francisco (1) 415-371-5026; [chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)

### Secondary Contact:

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### Upside scenario

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Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

Many issues are enhanced by bond insurance.

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of Ratings Direct at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

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**To:** Johnny Amaral[jamaral@westlandswater.org]; Gayle Holman[gholman@westlandswater.org]  
**From:** Dan Pope  
**Sent:** Fri 3/25/2016 8:10:39 PM  
**Subject:** FW: S&P Revised Outlook  
[Press Release Westlands Outlook Change.pdf](#)

I have not yet reviewed the release. Bobbie noted the watch S&P placed on Westlands has been removed

---

**From:** Weil, Chloe (Analytical) [mailto:chloe.weil@standardandpoors.com]  
**Sent:** Friday, March 25, 2016 1:04 PM  
**To:** Bobbie Ormonde  
**Cc:** 'Dan Pope'; 'david.houston@citi.com'; Brown, Douglas S.; tbirmingham@westlandswater.org; Dyson, Paul (Analytical)  
**Subject:** S&P Revised Outlook

Bobbie—

We appreciate the assistance you provided getting the information we needed to conduct our review.

I am attaching a copy of the press release regarding the outlook change that was released this morning. I will send you a draft of the full report to review for factual accuracy on Monday.

Happy Easter to all who celebrate.

Regards,  
Chloe



**Chloe Weil**  
Director, U.S. Public Finance Infrastructure Group

Standard & Poor's Ratings Services  
One California Street, 31<sup>st</sup> Floor, San Francisco, CA 94111  
T 415.371.5026 | F 415.371.5090  
[chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)  
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## Westlands Water District, CA Ratings Removed From CreditWatch, Affirmed After Our Query Into SEC Enforcement Action

**Primary Credit Analyst:**

Chloe S Weil, San Francisco (1) 415-371-5026; chloe.weil@standardandpoors.com

**Secondary Contact:**

Paul J Dyson, San Francisco (1) 415-371-5079; paul.dyson@standardandpoors.com

SAN FRANCISCO (Standard & Poor's) March 25, 2016--Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs); and
- 'A+' long-term rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, issued for Westlands Water District.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch with negative implications on March 14, 2016, following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Security Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's

extraordinary accounting transactions that were the subject of the proceedings.

"Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as 'vulnerable' and will continue to monitor the district's continuing disclosure practices," said Standard & Poor's credit analyst Chloe Weil. "However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We further believe the district's present financial position remains comparable to that of its peers at the present rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon," Ms. Weil added.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

#### RELATED CRITERIA AND RESEARCH

##### Related Criteria

- USPF Criteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- USPF Criteria: Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
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- U.S. State And Local Government Credit Conditions Forecast, Jan. 11, 2016
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**To:** Jon Rubin[Jon.Rubin@sldmwa.org]; 'Frances Mizuno'[frances.mizuno@sldmwa.org]  
**From:** Dan Pope  
**Sent:** Fri 3/25/2016 8:24:11 PM  
**Subject:** S&P Revised Outlook  
[Press Release Westlands Outlook Change.pdf](#)

Jon & Frances,

Attached please find today's press release for S&P on their recent review and removal of the negative watch rating. It speaks for itself.

Regards,

Dan

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## Westlands Water District, CA Ratings Removed From CreditWatch, Affirmed After Our Query Into SEC Enforcement Action

**Primary Credit Analyst:**

Chloe S Weil, San Francisco (1) 415-371-5026; chloe.weil@standardandpoors.com

**Secondary Contact:**

Paul J Dyson, San Francisco (1) 415-371-5079; paul.dyson@standardandpoors.com

SAN FRANCISCO (Standard & Poor's) March 25, 2016--Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

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- 'A+' long-term rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, issued for Westlands Water District.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch with negative implications on March 14, 2016, following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Security Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's

extraordinary accounting transactions that were the subject of the proceedings.

"Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as 'vulnerable' and will continue to monitor the district's continuing disclosure practices," said Standard & Poor's credit analyst Chloe Weil. "However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We further believe the district's present financial position remains comparable to that of its peers at the present rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon," Ms. Weil added.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

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**To:** dpope@westlandswater.org[dpope@westlandswater.org]  
**From:** Joe Ducote (SUTTER SECURITIES IN)  
**Sent:** Tue 3/29/2016 2:57:07 PM  
**Subject:** Re:S&P stable rating of Westlands  
[Westlands Water District S&P Report 2016 Review.pdf](#)

Very nice, Dan. Let's talk later today.

----- Original Message -----

From: dpope@westlandswater.org  
To: JOE DUCOTE (SUTTER SECURITIES IN), fsoriano@suttersf.com  
At: Mar 28 2016 17:11:04

Hot off the press. As you are aware, Fitch is expected to be issued sometime later.

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## Summary:

Westlands Water District, California  
San Luis & Delta-Mendota Water  
Authority; Joint Criteria; Water/Sewer

### Primary Credit Analyst:

Chloe S Weil, San Francisco (1) 415-371-5026; [chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)

### Secondary Contact:

Paul J Dyson, San Francisco (1) 415-371-5079; [paul.dyson@standardandpoors.com](mailto:paul.dyson@standardandpoors.com)

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Outlook

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## Summary:

# Westlands Water District, California San Luis & Delta-Mendota Water Authority; Joint Criteria; Water/Sewer

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<b>Westlands Wtr Dist wtr &amp; swr</b>		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
<b>San Luis &amp; Delta-Mendota Wtr Auth, California</b>		
Westlands Wtr Dist, California		
San Luis & Delta-Mendota Wtr Auth (Westlands Wtr Dist) (BAM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

## Rationale

Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs); and
- 'A+' rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, of which Westlands Water District is the guarantor.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Securities and Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1.0x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's extraordinary accounting transaction that were the subject of the proceedings. Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as "vulnerable" and will continue to monitor the district's continuing disclosure practices. However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We believe the district's current financial position remains comparable to that of its peers at the current



rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon.

The ratings further reflect our assessment of the district's:

- Strong market position as the sole provider of irrigation water in a diverse agricultural area;
- Revised rate structure that enhances revenue stability despite significant increases in supplemental water supply costs and fluctuations in water deliveries from the U.S. Bureau of Reclamation's Central Valley Project (CVP);
- Significant progress on the decades-long dispute with the Bureau of Reclamation regarding drainage-impaired soils in the service territory, although the legal settlement remains subject to congressional approval; and
- Future challenges associated with the procurement of additional raw water sources over the long-term horizon.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The valley has been farmed with irrigation water in varying degrees for approximately half a century, and could not exist on its current scale without major water infrastructure programs such as the CVP. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable, and produces high-value permanent crops, such as almonds and pistachios, as well as tomatoes, grapes, and cantaloupes. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

Water sales and purchased water costs are the district's primary revenue sources and expenses. The main water source comes from a 1.195 million acre-foot contract entitlement with the U.S. Bureau of Reclamation's CVP. The district serves as the leading provider of imported water to the region. Supply mix can vary significantly from year to year based on CVP allocations, which are driven by hydrology. The annual safe yield of the confined underground aquifer adds another 200,000 acre-feet and local farmers generally extract as much groundwater as possible, but CVP allocations and groundwater supplies have long been inadequate to meet the region's water demand, which is approximately 1.2 million acre-feet. Accordingly, the district is continually engaged in efforts to supplement its water supply from outside sources. In recent years, the district has provided between one-half and two-thirds of all water consumed in the service area through higher-cost supplemental purchases.

As the district's financial performance is hydrology-dependent, the district performs robust financial forecasting and is proactive in maintaining relationships with other water districts and key stakeholders to ensure adequate water transfers, and to that end has been adept at securing regulatory approvals to receive supplemental water.

Weather-normalized, formal historic trend analysis is performed and updated annually for both revenue and expenses; and we believe regular efforts are made to determine whether one or more factors will cause revenues or expenses to deviate from their long-term trends over the next few years. In addition, beginning in fiscal year 2011, to help alleviate the burden on water users for the increased cost of water in short water supply years, the district's board elected to collect half of the operations & maintenance charges through a land-based charge to landowners rather than through the water rate.

On Sept. 15, 2015, the U.S. Department of Justice and Westlands approved a settlement ending a decades-long dispute over the Bureau of Reclamation's responsibility to provide drainage for the farmland within Westlands. The drainage

settlement requires Westlands to assume full responsibility for drainage management within its boundaries, and will cap CVP deliveries at 75% of the district's contract entitlement. Furthermore, Westlands will be required to retire a minimum of 100,000 acres of land and to repurpose the non-irrigated lands for environmentally friendly uses. We view the settlement as manageable as the district has already acquired 90,000 acres of land for this purpose. The district also has over \$40 million in designated reserves that could be used to meet the remaining requirements under the settlement.

The district's financial performance has been sound in our view over the past five years, despite the impact of the ongoing drought on the district's water supply. Senior lien debt service coverage (DSC) improved to 2.1x in fiscal 2015 from 1.8x in fiscal 2014, while all-in DSC, which adjusts for the district's fixed charges included in operating expenses, the district's subordinated lien obligations, and the impact of one-time land sales on revenues, improved to 1.6x from 1.2x, which we consider good. Based on unaudited results, we expect all-in DSC in fiscal 2016 to remain strong, at about 1.7x, excluding one-time land sales. Based on management's forecast, we expect all-in DSC to decline to about 1.0x in fiscal 2017, which we consider adequate at the current rating level. With a debt-to-capitalization ratio of about 55% as of February 28, 2015, we consider the district to be moderately leveraged.

The district's liquidity position is strong, in our view. The district's cash and cash equivalents as of Feb. 29, 2016 (unaudited) was \$102 million, which represented 314 days' of operating expenses. We understand that the district maintains a strong liquidity position, in part to enable it to opportunistically acquire water rights or otherwise firm up its water supply.

The proposed California WaterFix (the revised approach to the Bay Delta Conservation Plan), a comprehensive plan for the Bay-Delta to address environmental and water supply issues, if adopted and implemented, would entail substantial infrastructure investment in the Delta and implementation of other conservation measures. The capital costs associated with this project will likely be large--most recently estimated at \$14.6 billion, and the district estimates that its proportionate share would be about \$2.4 billion. However, we recognize that the method for financing the project has not been established, and the district has no obligation to fund these future costs. However, we believe that substantial increases in the district's land-based charges and CVP water rates will be necessary to cover the district's (yet to be determined) share of the planned Bay Delta improvements. Even so, we believe that the CVP water may remain the district's lowest cost source of water, and is critical to support the region's agricultural output.

## Outlook

The stable outlook reflects our view of the district's competitive position as the leading provider of supplemental water to a region with strong water demand and scarce water resources. During the two-year outlook period, we anticipate that the district will continue to sustain its good coverage metrics and extremely strong liquidity position while managing its water supply. We also expect the district to finalize its plans regarding the drainage settlement and that the district currently has ample capital funding capacity to execute the requirements under the agreement.

### Upside scenario

Although not anticipated, due to the district's service territory characteristics and potential shifts in the water supply portfolio, we may raise the ratings if the district is able to stabilize and sustain strong coverage metrics and if the local

service economy strengthens and diversifies such that its characteristics are comparable to those of peers at a higher rating level.

#### Downside scenario

We may lower the ratings if changes to the water supply portfolio or unexpected capital needs cause the district's financial metrics to materially erode.

## Related Criteria And Research

#### Related Criteria

- USPFCriteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- USPFCriteria: Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- USPFCriteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- Criteria: Use of CreditWatch And Outlooks, Sept. 14, 2009

#### Related Research

- U.S. State And Local Government Credit Conditions Forecast, Jan. 11, 2016
- U.S. Municipal Water And Sewer Utilities 2014 Sector Outlook: Learning To Do More With Less, Jan. 9, 2014

Ratings Detail (As Of March 28, 2016)		
Westlands Wtr Dist wtr & swr (AGM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
Westlands Wtr Dist (Westlands Wtr Dist) JOINT CRIT		
<i>Long Term Rating</i>	AAA/A-1	Current
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

Many issues are enhanced by bond insurance.

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of Ratings Direct at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

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**To:** dpope@westlandswater.org[dpope@westlandswater.org]  
**From:** Joe Ducote (SUTTER SECURITIES IN)  
**Sent:** Wed 7/13/2016 4:32:48 PM  
**Subject:** Re:Notification of Fitch Rating Decision - Westlands Water District (CA)  
[Final release WWD\(CA\) July 2016.pdf](#)

Thank you, Dan.

----- Original Message -----

From: dpope@westlandswater.org  
To: JOE DUCOTE (SUTTER SECURITIES IN), fsoriano@suttersf.com  
At: Jul 13 2016 08:04:26

Friends,  
Thank you for your consideration here

Sent from my iphone

>  
>

---

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## **FITCH REMOVES WESTLANDS WATER DISTRICT, CA WATER REVS FROM NEGATIVE WATCH; OUTLOOK TO NEGATIVE**

Fitch Ratings-Austin-12 July 2016: Fitch Ratings has affirmed the ratings on and removed from Ratings Watch Negative the following underlying ratings of the Westlands Water District, California (Westlands or the district):

--\$97.3 million revenue certificates of participation (COPs), series 2005A, 2007A, 2007B and 2008A, at 'AA-';

--\$22.1 million revenue COPs series 2008A (bank bonds) at 'AA-';

--\$74.2 million revenue refunding bonds series 2012A at 'AA-'.

In addition, Fitch has affirmed the ratings on and removed the Rating Watch Negative on the following San Luis & Delta Mendota Water Authority, CA (SLDMWA) bonds:

--\$29.8 million refunding revenue bonds (Delta Habitat Conservation and Conveyance Project), series 2013A, at 'AA-'.

The Rating Outlook is Negative.

### **KEY RATING DRIVERS**

**NEGATIVE WATCH REMOVED:** Fitch has removed the district's ratings from Negative Watch because it believes the actions taken by the Securities and Exchange Commission and the district mitigate the risk of future misrepresentations and omissions by the district relating to district financial results. Further, board adopted fixed-land based charges mitigate the risk of future revenue volatility.

**NEGATIVE OUTLOOK:** The Negative Rating Outlook is due to the potential for significant leveraging and additional drainage management responsibilities that would be assumed by the district following authorization of a drainage settlement (drainage settlement) with the United States. Authorization of the drainage settlement is pending U.S. Congressional approval.

**LARGEST WATER DISTRICT IN THE NATION:** Westlands is the largest water district by acreage in the nation, encompassing 614,700 acres in Fresno and Kings Counties in the San Joaquin Valley serving mostly agricultural irrigation needs. The district serves a highly concentrated agricultural user base that produces crops valued around \$1.5 billion annually.

**LOW ALLOCATIONS LEAD TO HIGHER COSTS:** Although the district has ample water entitlements [1.19 million acre feet (af) to serve regional irrigation need]), allocations of Central Valley Project (CVP) water can vary widely from year to year, driven by hydrology and environmental regulations. Unfavorably for the district, CVP allocations have been 5% or less annually since 2014, forcing the district to purchase more costly supplies elsewhere for its customers.

**SOUND FINANCIAL POSITION:** The district's financial position is generally stable following the adoption of fixed-rate land based charges in fiscal 2011. DSC on senior lien debt has been 1.6x

or higher since 2011. District cash balances have continued to climb, growing to over \$140 million for fiscal 2015, up from just \$40 million in fiscal 2010.

**WESTLANDS GUARANTY ON SLDMWA BONDS:** The rating on SLDMWA bonds reflects Westlands' obligation to pay 100% of debt service to the trustee. Westlands' is entitled to subsequent repayment from the other eight districts, which makes up about 20%, or approximate \$8 million, of the total obligation. SLDMWA obligation is paid as an operating expense by Westlands.

## RATING SENSITIVITIES

**ADDITIONAL LEVERAGE WITH DRAINAGE SETTLEMENT:** The rating would likely be downgraded if the U.S. Congress approves the drainage settlement with Westlands Water District due to significant debt likely to be required as part of the settlement, which could ultimately pressure the district's financial performance. If the drainage settlement agreement is not authorized, the Outlook would likely be moved to Stable based on the district's existing credit profile.

**LEVERAGE ON BEHALF OTHERS:** Additional debt taken on by the district on behalf of other agencies, such as the San Luis & Delta Mendota Water Authority, could further pressure district finances and lead to a rating downgrade.

## CREDIT PROFILE

### RATING WATCH NEGATIVE REMOVED

Following further discussions with the district, Fitch believes that the accounting reclassifications utilized in fiscal 2010 to meet the 1.25x rate covenant were isolated to that reporting period. Additionally, the board's adoption of a formal written policy for disclosure procedures coupled with the staff training related to disclosure procedures and responsibilities required under federal law are indicative of the district board and management's undertaking to provide more transparent financial disclosure going forward. Removal of the Rating Watch Negative is further supported by Fitch's belief that the adoption of fixed-rate land based charges starting in fiscal year 2011 help to mitigate the risk of future revenue volatility resulting from reduced CVP water allocations.

### DRAINAGE SETTLEMENT COULD PRESSURE DISTRICT

In September of 2015 the district entered into a settlement with the U.S. to resolve decades of litigation surrounding drainage issues within the district brought on by the district and various district landowners. The settlement, which has been signed by the U.S. and the district, still requires Congressional authorization. Fitch views favorably the district's receipt of a permanent water contract (albeit with a reduced delivery entitlement) and relief from \$295 million (present value) in obligations to the U.S. However, Fitch is concerned with the additional responsibilities taken on by the district for drainage management and the related costs and liability that could be incurred.

Low end estimates of costs associated with the drainage settlement are approximately \$400 million, which is double the current debt outstanding of the district and its obligation to repay bonds on behalf of the SLDMWA. High end estimates are closer to \$800 million, or four times the district's current outstanding obligations. The district is also required to permanently retire 100,000 acres of land (reducing the irrigable acreage by 17%) and compensate farmers in drainage affected parts of the district. The district currently owns about 90,000 acres of land and would look purchase or obtain non-irrigation covenants on the additional 10,000 acres. The district has about \$50 million set aside in a land and water reserve fund which could be used to offset the costs

related to the immediate implementation of some of the drainage settlement requirements, but would likely have to debt finance additional costs associated with completing the requirements.

## LARGE, UNIQUE IRRIGATION DISTRICT

Westlands is governed by a nine-member board of directors elected from district land owners and is responsible for district governance and policies. The district maintains full independent rate-setting authority as well as the ability to place a lien on property if water bills are unpaid. The district covers 614,700 acres in Fresno and Kings County on the west side of the San Joaquin Valley of which about 568,000 is irrigable. It is the largest irrigation district in the U.S. by acreage and responsible for administering the delivery of water from the United States Bureau of Reclamation (USBR) CVP.

## CONCENTRATION OF AGRICULTURAL CUSTOMERS

The district serves a small concentrated customer base comprised of approximately 700 connections for agricultural irrigation service and another 200 municipal and industrial connections. Irrigation water sales accounted for 80% of the district's operating revenues, land based charges 17% and municipal and industrial revenues accounted for just over 2% of operating revenues in fiscal 2015. Offsetting the ratepayer concentration risk somewhat is the high value of the cash crops farmed in the district (about \$2 billion in calendar 2015).

## 2015 FINANCIAL RESULTS BOOSTED BY LAND SALES

Financial results for fiscal 2015 were strong, boosted by \$22 million in additional non-operating revenues from the sale of land. Senior lien and all-in DSC, including land sale proceeds were 3.6x and 2.6x, respectively. Without the land sale proceeds, DSC would have still been healthy at 2.1x and 1.7x, respectively. The district budgets to achieve 1.25x DSC on senior lien debt and its rates are designed to cover the cost of water plus some operational expenses of the district. Management provided forecasts project senior lien DSC of 2.3x in fiscal 2016 supported by an additional \$6 million in land sales, before dropping to 1.4x for fiscals 2017 - 2020. Forecasts assume rates based on 0% CVP water allocations.

District cash continued an upward trend. Cash balances registered \$140 million in fiscal year 2015, up sharply from \$40 million in fiscal year 2010. Cash balances would likely decline somewhat when the drainage settlement is authorized as the district indicated utilizing some reserves to complete drainage settlement requirements.

## LOW CVP ALLOCATIONS RESULT IN HIGHER COST

District water is purchased from the USBR's CVP project and sold to users at prices designed to cover cost. CVP allocations have been minimal the last several years, with with 0% CVP allocation in 2014 and 2015 and just 5% in 2016. When allocations are low the district is forced to purchase supplemental water on the open market which can be costly.

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#### Applicable Criteria

Revenue-Supported Rating Criteria (pub. 16 Jun 2014)

[https://www.fitchratings.com/creditdesk/reports/report\\_frame.cfm?rpt\\_id=750012](https://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=750012)

U.S. Water and Sewer Revenue Bond Rating Criteria (pub. 03 Sep 2015)

[https://www.fitchratings.com/creditdesk/reports/report\\_frame.cfm?rpt\\_id=869223](https://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=869223)

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**From:** Bobbie Ormonde  
**Sent:** Fri 3/20/2015 4:11:49 PM  
**Subject:** Office of Inspector General Report  
[WR-EV-BOR-0003-2012Public Audit Report.pdf](#)

Russ,

Let me know if this is not the report you are looking for.

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Westlands Water District  
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OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

# **CENTRAL VALLEY PROJECT, CALIFORNIA: REPAYMENT STATUS AND PAYOFF**



OFFICE OF  
**INSPECTOR GENERAL**  
U.S. DEPARTMENT OF THE INTERIOR

MAR 26 2013

Memorandum

To: Michael L. Connor  
Commissioner, Bureau of Reclamation

From: *Stephen A. Henderson for*  
Mary L. Kendall  
Deputy Inspector General

Subject: Final Evaluation Report – Central Valley Project, California: Repayment Status  
and Payoff  
Report No. WR-EV-BOR-0003-2012

This memorandum transmits our evaluation report of the Bureau of Reclamation's (USBR) ability to recover Federal investments in the Central Valley Project (CVP) by 2030.

Because USBR's ratesetting policies do not ensure that an appropriate share of capital costs and funding deficits are repaid annually, it is not making steady progress toward recovering Federal investments in the CVP. With 18 years left to fulfill Congress' repayment mandate by 2030, USBR has an opportunity to address the repayment uncertainty inherent in its current ratesetting policies. We include two recommendations in our report that, if implemented, will help to improve USBR's ability to recover the CVP investments.

Based on the February 28, 2013 response from USBR to the draft report, we consider both recommendations resolved but not implemented. We will refer these recommendations to the Assistant Secretary for Policy, Management and Budget to track implementation.

The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit reports issued, actions taken to implement our recommendations, and recommendations that have not been implemented.

A response to this report is not required. If you have any questions regarding this memorandum or the subject report, please do not hesitate to contact me at 202-208-5745.

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## Results in Brief

In 1937, the Bureau of Reclamation (USBR) began construction of the largest water supply project in the United States: the Central Valley Project (CVP) in the State of California. To recover Federal investments in the CVP facilities, USBR established contracts that guaranteed contractors a fixed annual repayment rate for 40 years. The fixed water rates specified in these contracts, however, were insufficient to recover the Federal investment in the CVP. As a result, in the first 40 years of the CVP operation, little progress was made toward repayment of the Federal investments. In 1986, Congress passed legislation addressing operational repayment deficits and required repayment of the Federal investment in the CVP by 2030. We conducted this evaluation to determine whether the Federal Government is making steady repayment progress and is on track to recoup its investments in the CVP by the legally established deadline of 2030.

We found that USBR's water ratesetting policies do not ensure that an appropriate share of capital costs and prior-year funding deficits are repaid annually. Water deliveries to the CVP contractors have been highly variable from year to year. When actual water deliveries are less than projected deliveries, revenues are insufficient to recover the Federal investment in the project. When actual water deliveries exceed projected deliveries, however, existing contract provisions stipulate that excess revenues collected by USBR must be refunded to the contractors. As a result, USBR has not demonstrated steady progress toward recovery of Federal investments in the CVP. With 18 years left to fulfill Congress' repayment mandate of 2030, USBR has an opportunity to address its current ratesetting policies that are dependent on annual water deliveries.

Because of the uncertainty of annual water deliveries and the potential instability of repayment revenues, repayment shortfalls could become significant enough to require political intervention. If this repayment deadline is not met, USBR will not have met its legal mandate and once again will have to put this issue before Congress.

---

# Introduction

## Objective

Our objective was to determine whether the Federal Government is making steady repayment progress and is on track to recoup its investments in the Bureau of Reclamation's (USBR) Central Valley Project (CVP) by the legally established deadline of 2030.

## Background

USBR began construction of the CVP in California in October 1937. It is currently the largest water supply project in the United States, providing water to more than 3 million acres of farmland, which produce crops worth \$3 billion a year. In addition, the CVP supplies water to nearly 1 million households each year. Power generation facilities constructed as a part of the CVP provide power equivalent to the annual energy needs of 650,000 Californians. As of 2011, the total reimbursable Federal investment in CVP facilities providing water for irrigation and municipal and industrial (M&I) purposes was \$1.3 billion.

Reclamation Law<sup>1</sup> requires that contractors, who benefit from the project, repay the Federal investment in irrigation and M&I facilities. To secure repayment of the Federal investment, USBR entered into water service contracts that guaranteed contractors fixed water rates for 40-year terms. The intent of the contracts was for these rates to repay construction costs over the 40-year period. Reclamation Law requires USBR to establish water rates that produce revenue at least sufficient to cover annual operations and maintenance (O&M) costs and the appropriate share of fixed (capital) costs of the project. As time went on, however, annual O&M costs increased to the point where they exceeded revenues generated by the fixed water rates established in the water service contracts. By the 1970s, contractors had repaid little of the original costs to construct the CVP and owed additional O&M costs financed by the Federal Government.

In 1986, Congress enacted the Coordinated Operations Act of 1986 to address the CVP repayment issues.<sup>2</sup> The law established 2030 as a firm repayment deadline for contractors to repay all construction costs and O&M deficits existing as of 1986.<sup>3</sup> In addition, it required contracts to include provisions for adjusting rates if it is found that the rate in effect may not be adequate to recover Federal investments. USBR revised its water ratesetting policies<sup>4</sup> to address previous repayment deficiencies and the requirements of the Act.<sup>5</sup> Under its current

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<sup>1</sup> Reclamation Law is the term used to refer to the total body of public law governing the reclamation program, beginning with the Reclamation Act of 1902 and including all laws amending and supplementing the Act.

<sup>2</sup> Coordinated Operations Act of 1986, Pub. L. No. 99-546, 100 Stat. 3050-56 (1986).

<sup>3</sup> *Id.*

<sup>4</sup> "The CVP Irrigation Ratesetting Document" was approved in 1988 and the CVP "Interim Ratesetting Policy, Municipal, and Industrial Water" was approved in 1995.

<sup>5</sup> Coordinated Operations Act of 1986, Pub. L. No. 99-546, 100 Stat. 3050-56 (1986).



ratesetting policy, USBR calculates a new water rate each year for each contractor. Each contractor's annual water rate includes three primary component rates to—

- recover the estimated annual CVP O&M cost allocated to the contractor;
- recover the unpaid balance of the contractor's O&M deficit over the remaining repayment period; and
- repay the capital costs incurred by the contractor over the remaining repayment period.

USBR calculates these component rates by dividing the estimated annual O&M cost or the proportional share of Federal investment owed by the amount of water that USBR anticipates delivering in the upcoming year. USBR calculates some of the rates based on actual cost data from 2 years earlier because the CVP water-rate development process takes an entire year. For example, USBR calculated the 2013 CVP capital water rates based on the 2011 CVP financial data.

USBR's ratesetting policy also dictates how it will use annual water revenues. Revenues are used to pay O&M costs first, interest expenses second, and interest-bearing O&M deficits incurred since 1986 third. Non-interest-bearing O&M deficits accumulated prior to 1986 and the capital investment component are repaid last.

In August 2004, we issued a report on the CVP contract renewal process (see Appendix 2).<sup>6</sup> In the report, we discussed concerns that contractors might not repay Federal investments in the CVP by 2030 due to understated water rates and uncertain water availability. We noted that these factors could result in expanding repayment relief to irrigation contractors and significant, unplanned increases in the CVP power rates. The report suggested that USBR—

- formally revise water ratesetting bases;
- annually estimate total aid to irrigation requirements; and
- provide the estimate to the Federal agency responsible for setting power rates.

In response to the report, USBR made some changes to its basis for computing water rates. Our evaluation concluded, however, that USBR's rate calculation changes were not sufficient to eliminate understated water rates and continued uncertainty about CVP repayment.

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<sup>6</sup> Office of Inspector General, U.S. Department of the Interior, No. W-IN-BOR-0016-2004, "Central Valley Project Contract Renewal Process," (August 2004).

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# Findings

USBR is not making steady progress toward recovery of Federal investments in the CVP. The current CVP ratesetting policies and water projection methods do not ensure that sufficient revenue is available each year to recover annual O&M costs and to repay an appropriate share of the remaining Federal investment in the project. In addition, current CVP water service contracts include a provision that prevents USBR from using excess annual revenues to repay the Federal investment.

## **Current Ratesetting Process Contributes to Repayment Uncertainty**

### **Estimating Future Water Deliveries**

USBR calculates the CVP contractors' water rates using estimates of the amount of water it expects to deliver during the coming year. The water that is actually available for delivery to contractors, however, depends on the amount of rain and snow that falls after water rates are set and can be highly variable from year to year. When the actual amount of water delivered is less than the estimated amount that USBR used to calculate the annual water rates, revenue shortfalls occur, which cause shortages in repaying capital costs and O&M deficits.

In addition, USBR compounds the uncertainty of the water ratesetting process by using more than one method to estimate the coming year's water deliveries.

USBR calculates O&M component rates using either the average of the previous 5 years of water deliveries or the contract maximum deliveries, whichever amount is lesser. Capital repayment and O&M deficit component rates, on the other hand, are calculated based on the average of water deliveries since 1995. The differences in these estimates are significant. For example, in developing the 2012 rate for irrigation water delivered to the Westlands Water District via the San Luis Canal, USBR used estimated water deliveries of 594,233 acre-feet to calculate the O&M component and 776,389 acre-feet to calculate the capital repayment component. Had USBR used the 5-year average to calculate Westlands' capital component, that rate would have been \$7.44 per acre-foot higher (30 percent) than the rate actually charged, which was \$24.25.

### **Priorities for Using Annual Water Revenues**

USBR's ratesetting policy puts the least priority on capital repayment for irrigation revenue and O&M deficit repayment for M&I revenues. When water deliveries do not meet projections for the year, revenues are used to pay other expenses first. If there are any revenues remaining, then USBR applies them toward capital repayment and O&M deficit repayment. Thus, in water-short years, USBR does not generate sufficient revenues to pay for capital repayment and O&M deficits. Those revenues generated are used to pay other expenses first, which creates a larger than anticipated shortfall.

## **No Fixed Repayment Amount**

USBR's current ratesetting policies for the CVP water service contracts do not include a fixed repayment amount to ensure that a portion of capital costs and O&M deficits are paid each year. Unlike fixed water rates, which resulted in insufficient repayment revenues and subsequent congressional action in 1986, a fixed repayment amount, much like a conventional mortgage, establishes a repayment schedule that assures repayment within a prescribed time. While the use of a fixed payment component is not typical in USBR water service contracts, fixed repayment amounts can stabilize water revenues and ensure steady CVP repayment even when annual water deliveries fluctuate wildly.<sup>7</sup>

USBR already uses a fixed repayment amount to ensure timely repayment of one part of the CVP. The San Felipe out-of-basin facilities supply water to two contractors serving the Santa Clara Valley and San Benito County in California. USBR incorporated fixed repayment schedules in the San Felipe out-of-basin water service contracts to ensure that all costs associated with these facilities are repaid by the established deadline.

## **Contract Provisions Limit Repayment**

The language of current CVP water service contracts also limits and adversely impacts the repayment of CVP capital costs and O&M deficits. In reviewing USBR's water service contract with the Del Puerto Water District, we noted that Article 10 of the contract states:

The amount of any overpayment by the Contractor of the Contractor's O&M, capital, and deficit (if any) obligations for the year shall be applied first to any current liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000 shall be refunded at the Contractor's request.

According to USBR, this negotiated contract language was included in all of the long-term CVP renewal contracts that USBR executed in 2005, as well as interim contracts that were negotiated with Westlands Water District and a number of other contractors. USBR officials told us that reopening negotiations on CVP water service contracts would be very difficult unless required by law, policy, or some other compelling reason.

USBR officials believe that, absent the contract language in Article 10, the CVP ratesetting methodology would be sufficient to recover CVP construction costs because overpayments in high water years would offset underpayments in low water years. These officials acknowledged that the refund language of Article 10

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<sup>7</sup> For example, during the 10-year period ending with water year 2010, irrigation water delivered to the Westlands Water District via the San Luis Canal varied from a high of 1,066,037 acre-feet in 2006 to a low of 229,137 acre-feet in 2009.

defeats the design of the CVP ratesetting methodology and adversely impacts repayment of CVP construction costs.

## **Impact of Ratesetting Weaknesses**

### **Repayment of Irrigation Investment**

We determined that if recent CVP water delivery trends continue, repayment of the capital investment in the CVP irrigation facilities could be short by between \$330 and \$390 million by 2030, as illustrated in Figure 1.

To identify why repayment progress was not satisfactory, we reviewed water rate calculations and payment information for four irrigation contractors. We determined that for the 3-year period from 2008 to 2010, actual water delivered to these contractors was only 41 percent of estimated water deliveries used to calculate their contract water rate. The variance in water deliveries resulted in a \$45 million shortfall in the contractors' repayment of capital costs that USBR must recover in future years through rate increases. In the case of one contractor, we estimated that by 2030, their CVP water rate could more than double if current trends continue.

### Projection of Unpaid Capital Investment in Irrigation Facilities

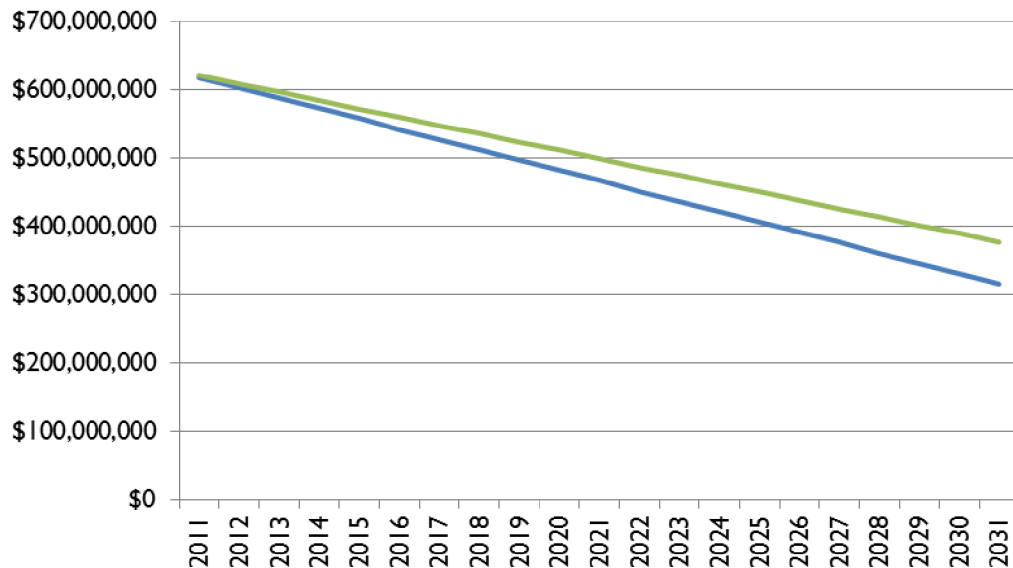


Figure 1. This figure projects the amount of Federal investments that will be left unpaid by 2030. The total amount unpaid with additional capital relief is projected to be approximately \$330 million. Without capital relief, the amount left unpaid is projected to be nearly \$390 million.

— The total unpaid with additional capital relief.

— The total unpaid with no additional capital relief.

Continued deferral of capital cost repayment by irrigation contractors could cause future water rates to exceed contractors' ability to pay. Provisions of Reclamation Law permit irrigation contractors to apply for relief from their capital repayment obligation based upon an economic analysis showing that they cannot meet that obligation. In this case, an irrigation contractor is charged the lesser of the cost of service or the irrigation contractor's payment capacity. At a minimum, the water rate must cover O&M costs. The difference between the cost-of-service rate and the irrigation contractor's ability to pay is shifted to the CVP power users for repayment through the U.S. Department of Energy. Thus, power users will pay any costs above the irrigation contractor's ability to pay.

### Repayment of M&I O&M Deficit

We also determined that if the recent CVP water delivery trends continue, repayment of the O&M deficits accumulated by M&I contractors could be short by approximately \$55 million by 2030, as illustrated in Figure 2.

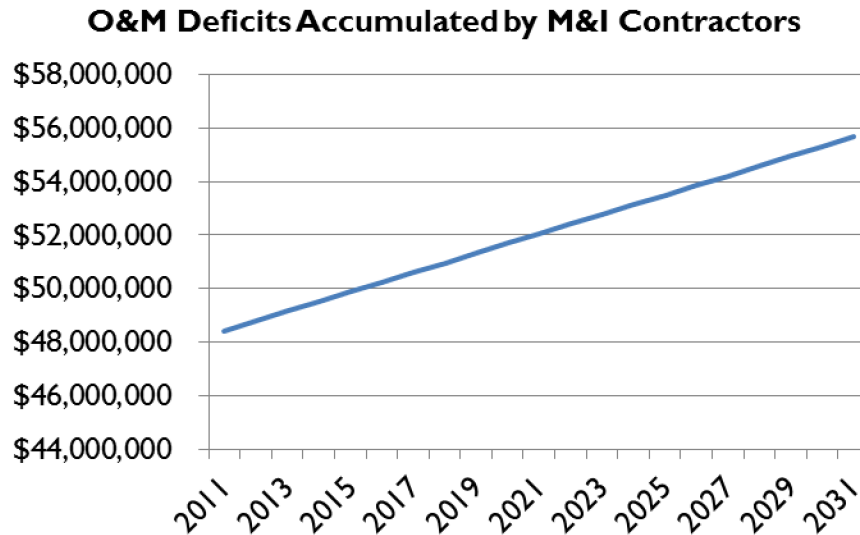


Figure 2. This figure shows the potential deficit growing over the next 18 years, as M&I contractors continue to accrue O&M costs and fall short of payments. This chart does not include repayment for San Felipe's facilities, as it is on track to repay the Federal investment.

Our review of water rate calculations and payment information for M&I contractors determined that for the 3-year period from 2008 to 2010, actual water deliveries to these contractors were only 63 percent of estimate. The variance in water deliveries resulted in a \$7 million shortfall in the contractors' repayment of accumulated O&M deficits. As with the CVP irrigation facilities, USBR must now recover this shortfall in the remaining 18 years through water rate increases. Unlike with irrigation repayment shortfalls, however, M&I contractors are not eligible for repayment assistance from power revenues. O&M deficits and all rate increases are the responsibility of the M&I contractors. Much like irrigation capital costs, if these trends continue, M&I water rates will continue to rise along with the possibility that not all costs will be repaid by 2030.

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# Conclusion and Recommendations

## Conclusion

USBR has 18 years remaining to ensure that the repayment requirement for the CVP is met. The longer USBR waits, the more significant the impact will become as the 2030 deadline approaches. This could cause significant, if not unsustainable, rate increases to water contractors. Rate increases create the potential for rates to exceed irrigation contractors' ability to pay and shift the repayment requirement to power users. Rate increases could also lead to water contractors asking Congress to extend the repayment deadline beyond 2030 or provide additional repayment relief. As the 2030 repayment deadline approaches, USBR has an opportunity to act before the impacts become even more significant.

USBR has revised the CVP ratesetting policies to deal with repayment shortfalls. Its revised policies are not entirely effective, however, because they do not ensure that an appropriate share of capital costs and accumulated O&M deficits are repaid each year. In addition, the terms of existing CVP water service contracts exacerbate the problem by requiring that USBR refund any excess revenues to contractors rather than applying these revenues to reduce the unpaid capital costs and O&M deficits. We believe that the most responsible approach would be to deal with the issue now. Allowing continued repayment uncertainty—or worse, missing the repayment deadline set by Congress—would mean that USBR has failed to effectively implement the Coordinated Operations Act of 1986<sup>8</sup> and fulfill its responsibility to obtain required, complete project repayment by 2030.

## Recommendations

We recommend that USBR:

1. Evaluate additional changes in the CVP ratesetting policies and implement actions that will ensure stable and predictable repayment of the entire Federal investment in the CVP between now and 2030.

### Agency Response:

Reclamation concurs that repayment contracts provide a more reliable means of repayment of capital costs. The update of the Central Valley Project (CVP) cost allocation, scheduled for completion in 2016, will provide an opportunity to convert to repayment contracts at the request of the contractor. However, because Reclamation cannot unilaterally amend a contract, each contractor must affirmatively request that its 9(e) or 9(c)(2) water service contract be converted to a 9(d) or 9(c)(1) repayment

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<sup>8</sup> Coordinated Operations Act of 1986, Pub. L. No. 99-546, 100 Stat. 3050-56 (1986).

contract pursuant to the Reclamation Project Act of 1939. The option to convert is contained in the current water service contracts. In addition, the Region will further analyze the rate of repayment and consider various factors that have impacted repayment. These factors include current operations criteria, hydrology impacts, and the repayment of Friant construction costs. If the rates appear to be too low then the rate methodology will be adjusted to promote recovery by 2030.

Responsible Official: David G. Murillo, Mid-Pacific Regional Director.

Target Implementation Date: The estimated completion for the analysis is December 31, 2013.

**OIG Reply:** We consider this recommendation resolved but not implemented (Appendix 4). The recommendation will be referred to the Assistant Secretary for Policy, Management and Budget.

2. Renegotiate the terms of irrigation water service contracts to eliminate the refund language of Article 10 at the earliest opportunity.

**Agency Response:**

Reclamation agrees the CVP contract Article 10 has impacted repayment. Renegotiation of this provision would be required and Reclamation will explore this option with our contractors. Reclamation will further analyze the costs and benefits associated with renegotiating the refund provision and determine whether to pursue this option.

Responsible Official: David G. Murillo, Mid-Pacific Regional Director.

Target Implementation Date: The estimated completion for the analysis is December 31, 2013.

**OIG Reply:** We consider this recommendation resolved but not implemented (Appendix 4). The recommendation will be referred to the Assistant Secretary for Policy, Management and Budget.



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# Appendix I: Scope and Methodology

## Scope

Our scope included the Bureau of Reclamation (USBR), Central Valley Project (CVP) water ratesetting process, associated ratesetting documents and information.

We conducted our evaluation in accordance with the Quality Standards for Inspections as put forth by the Council of Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions and recommendations.

## Methodology

To accomplish our evaluation, we—

- reviewed applicable laws, rules and regulations, and USBR policies related to CVP repayment;
- interviewed USBR officials regarding CVP repayment policies and practices;
- analyzed recent trends in CVP water deliveries, revenues, and repayment;
- selected a small judgmental sample of CVP contractors for more detailed review, emphasizing contractors that received substantial annual water deliveries from the CVP and that had significant unpaid balances of both capital cost and operation and maintenance deficits; and
- reviewed the contracts, water rates, revenues, and repayment data for the Westlands Water District, the Del Puerto Water District, the East Bay Municipal Utility District, Colusa Water District, Kanawha Water District, and the Sacramento County Water Agency.

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## Appendix 2: Prior Audit Coverage

The Office of Inspector General issued an audit report in August 2004, titled “Central Valley Project Contract Renewal Process, Bureau of Reclamation” (No. W-IN-BOR-0016-2004), that addressed the ratesetting policies and repayment status of USBR’s CVP. We discussed concerns that contractors might not repay the Federal investments in the CVP by 2030 due to understated water rates and uncertain water availability. We noted that these factors could result in expanding repayment relief to irrigation contractors and significant, unplanned increases in the CVP power rates. The report recommended that USBR—

- formally revise water ratesetting bases;
- annually estimate total aid to irrigation requirements; and
- provide the estimate to the Federal agency responsible for setting power rates to recover any unpaid capital investment in the CVP irrigation facilities.

To address the issue of understated water rates, USBR stated that it was planning to change its basis for computing water rates beginning in 2005. Under that plan, USBR would use the average of actual water deliveries for the last 5 years rather than contract entitlements as the base for calculating annual water rates. USBR was not planning to formally revise its ratesetting base or to alert the Federal agency marketing CVP power about ballooning irrigation assistance needs. USBR’s audit liaison coordinator told us that because the report contained suggestions rather than recommendations, the report was not referred to the Office of Financial Management for tracking of implementation.

During the course of this evaluation, we confirmed that USBR no longer uses contract entitlements as the basis for calculating water rates. We found, however, that USBR did not begin using the 5-year water delivery average to calculate all components of annual CVP water rates as it had planned. Instead, USBR calculates the capital repayment and O&M deficit components of CVP water rates based on the average annual water delivered to contractors since 1995. We found that USBR’s use of the longer-term average provides CVP contractors with lower water rates and contributes to continued uncertainty about CVP repayment.

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## **Appendix 3: USBR Response**

USBR's response to the draft follows on page 14.



# United States Department of the Interior

BUREAU OF RECLAMATION  
Washington, DC 20240

IN REPLY REFER TO:

84-27400

ADM-8.00

## MEMORANDUM

To: Office of Inspector General  
Attn: Assistant Inspector General for Audits, Inspections, and Evaluations

Through: Anne J. Castle *Anne J. Castle* MAR 8 2013  
Assistant Secretary – Water and Science

From: ~~Michael L. Connor~~ *Michael L. Connor* FEB 28 2013  
**Acting For** Commissioner

Subject: The Bureau of Reclamation's Response to the Office of Inspector General's (OIG)  
Draft Evaluation Report, *Central Valley Repayment Status and Payoff*, Report No.  
WR-EV-BOR-0003-2012

The OIG in its January 7, 2013, draft evaluation report, *Central Valley Repayment Status and Payoff*, requested that Reclamation inform the OIG of actions taken or planned to address the recommendations, as well as target dates and titles of the officials responsible for implementation. The requested information is attached.

If you have any questions or require additional information, please contact Elizabeth Cordova-Harrison, Director, Management Services Office, at 303-445-2783.

Attachment

The Bureau of Reclamation's Response to the  
Office of Inspector General (OIG) Draft Evaluation Report  
Central Valley Repayment Status and Payoff  
Report No. WR-EV-BOR-0003-2012

February 2013

Response to OIG Recommendations

Recommendation 1: Evaluate additional changes in the CVP ratesetting policies and implement actions that will ensure stable and predictable repayment of the entire Federal investment in the CVP between now and 2030.

Reclamation's Response: Reclamation concurs that repayment contracts provide a more reliable means of repayment of capital costs. The update of the Central Valley Project (CVP) cost allocation, scheduled for completion in 2016, will provide an opportunity to convert to repayment contracts at the request of the contractor. However, because Reclamation cannot unilaterally amend a contract, each contractor must affirmatively request that its 9(e) or 9(c)(2) water service contract be converted to a 9(d) or 9(c)(1) repayment contract pursuant to the Reclamation Project Act of 1939. The option to convert is contained in the current water service contracts. In addition, the Region will further analyze the rate of repayment and consider various factors that have impacted repayment. These factors include current operations criteria, hydrology impacts, and the repayment of Friant construction costs. If the rates appear to be too low then the rate methodology will be adjusted to promote recovery by 2030.

Responsible Official: David G. Murillo, Mid-Pacific Regional Director.

Target Implementation Date: The estimated completion for the analysis is December 31, 2013.

Recommendation 2: Renegotiate the terms of irrigation water service contracts to eliminate the refund language of Article 10 at the earliest opportunity.

Reclamation's Response: Reclamation agrees the CVP contract Article 10 has impacted repayment. Renegotiation of this provision would be required and Reclamation will explore this option with our contractors. Reclamation will further analyze the costs and benefits associated with renegotiating the refund provision and determine whether to pursue this option.

Responsible Official: David G. Murillo, Mid-Pacific Regional Director.

Target Implementation Date: The estimated completion for the analysis is December 31, 2013.

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## Appendix 4: Status of Recommendations

Recommendations	Status	Required Action
I and 2	Resolved but not implemented.	No further response to OIG is required. The recommendations will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.

## **Report Fraud, Waste, and Mismanagement**



Fraud, waste, and mismanagement in Government concern everyone: Office of Inspector General staff, departmental employees, and the general public. We actively solicit allegations of any inefficient and wasteful practices, fraud, and mismanagement related to departmental or Insular Area programs and operations. You can report allegations to us in several ways.



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**By Internet:**      [www.doi.gov/oig/index.cfm](http://www.doi.gov/oig/index.cfm)

**By Phone:**      24-Hour Toll Free:      800-424-5081  
Washington Metro Area:      202-208-5300

**By Fax:**      703-487-5402

**By Mail:**      U.S. Department of the Interior  
Office of Inspector General  
Mail Stop 4428 MIB  
1849 C Street, NW.  
Washington, DC 20240

**To:** Bobbie Ormonde[bormonde@westlandswater.org]  
**Cc:** Dan Pope[dpope@westlandswater.org]; Brown, Douglas S.[DBROWN@SYCR.com]; Houston, David[david.houston@citi.com]  
**From:** Tom Birmingham  
**Sent:** Fri 3/11/2016 5:02:37 PM  
**Subject:** Re: S&P Review of Westlands Water District

I am available on March 18, but do not know my availability on March 21. I am scheduled for jury duty the week of March 21, and will not know my availability on that day until the evening of March 20.

Sent from my iPhone

On Mar 11, 2016, at 8:37 AM, Bobbie Ormonde <[bormonde@westlandswater.org](mailto:bormonde@westlandswater.org)> wrote:

Tom,

Staff is in the process of gathering the data and updates requested by S & P. S & P is requesting to meet in person or by phone on March 18 or March 21. Please provide your availability, or we can discuss availability of the team today at 1:00 p.m. Please advise.

Bobbie Ormonde  
Director of Finance and Administration  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 93703  
(559) 241-6203

---

**From:** Weil, Chloe [<mailto:chloe.weil@standardandpoors.com>]

**Sent:** Thursday, March 10, 2016 6:23 PM  
**To:** Brown, Douglas S.; Bobbie Ormonde  
**Cc:** Dyson, Paul  
**Subject:** S&P Review of Westlands Water District  
**Importance:** High

Good evening Bobbie -

As I previously indicated, we will be working on a full review of the rating on the District's revenue bonds as a result of yesterday's SEC enforcement action. We last conducted a full review of the District in relation to the May 2013 issuance by the San Luis & Delta-Mendota Water Authority of the series 2013A bonds.

I am attaching our rating report from 2013 as a point of reference, and I am sending an attached list of key questions for your consideration to help expedite our credit review. As you can see, the bulk of our questions relate to the accounting treatment of the adjustments made in 2010 and 2012, and making sure we understand each of the revenue items in the fiscal 2015 audit - but we are also focused on the District's financial projections over the next five years.

We are hoping to schedule a meeting with the District (either in person or by phone) on March 18<sup>th</sup> or 21<sup>st</sup> to give us enough time to finalize the rating by March 25<sup>th</sup>. We will wait to hear from you for which date works best for the District.

Finally, I am also including a copy of our new water/sewer criteria that we released in January.



Regards,

Chloe

<image002.jpg>

**Chloe Weil**

Director, U.S. Public Finance Infrastructure Group

Standard & Poor's Ratings Services  
One California Street, 31<sup>st</sup> Floor, San Francisco, CA 94111  
T 415.371.5026 | F 415.371.5090  
[chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)  
[www.standardandpoors.com](http://www.standardandpoors.com)

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---

**From:** Brown, Douglas S. [<mailto:DBROWN@SYCR.com>]

**Sent:** Thursday, March 10, 2016 1:01 PM

**To:** Weil, Chloe (Analytical)

**Cc:** Bobbie Ormonde

**Subject:** WWD

Chloe,

Per our conversation:

Bobbie Ormonde  
District Director of Finance & Administration  
[bormonde@westlandswater.org](mailto:bormonde@westlandswater.org)  
(559) 241-6203

**Douglas S. Brown**

<image001.png>

Stradling Yocca Carlson & Rauth, P.C.  
500 Capitol Mall, Suite 1120 | Sacramento, CA 95814  
660 Newport Center Drive, Suite 1600 | Newport Beach, CA 92660  
(c) 949.500.0855  
[dbrown@sycr.com](mailto:dbrown@sycr.com) | [sycr.com](http://sycr.com)  
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<Series 2013 San Luis Westlands Water District - S&P Rating Report.pdf>

<Standard and Poors Revised Water\_Sewer Criteria\_Jan 19\_2016.pdf>

<S&P Pre-Mtg Memo Westlands Water District.pdf>



**To:** Bobbie Ormonde[bormonde@westlandswater.org]  
**From:** Weil, Chloe  
**Sent:** Fri 3/11/2016 5:54:36 PM  
**Subject:** RE: S&P Review of Westlands Water District

No problem. I hope my accounting questions are clear. If it is easier we can discuss over the phone.

Chloe Weil  
Standard and Poor's  
415-371-5026

---

**From:** Bobbie Ormonde [mailto:bormonde@westlandswater.org]  
**Sent:** Friday, March 11, 2016 9:22 AM  
**To:** Weil, Chloe (Analytical)  
**Subject:** RE: S&P Review of Westlands Water District

Chloe,

We are in the process of gathering the data requested. As for the date of our meeting, I am awaiting availability of a few members of our team. I will get back to you today.

Bobbie Ormonde  
Director of Finance and Administration  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 93703  
(559) 241-6203

---

**From:** Weil, Chloe [mailto:chloe.weil@standardandpoors.com]  
**Sent:** Thursday, March 10, 2016 6:23 PM  
**To:** Brown, Douglas S.; Bobbie Ormonde  
**Cc:** Dyson, Paul  
**Subject:** S&P Review of Westlands Water District  
**Importance:** High

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Finally, I am also including a copy of our new water/sewer criteria that we released in January.

Regards,

Chloe



Chloe Weil

Director, U.S. Public Finance Infrastructure Group

Standard & Poor's Ratings Services  
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---

**From:** Brown, Douglas S. [<mailto:DBROWN@SYCR.com>]

**Sent:** Thursday, March 10, 2016 1:01 PM

**To:** Weil, Chloe (Analytical)

**Cc:** Bobbie Ormonde

**Subject:** WWD

Chloe,

Per our conversation:

Bobbie Ormonde  
District Director of Finance & Administration  
[bormonde@westlandswater.org](mailto:bormonde@westlandswater.org)  
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**To:** Joe DuCote[jducote@bloomberg.net]; Frank Soriano[fsoriano@suttersf.com]  
**From:** Dan Pope  
**Sent:** Tue 3/29/2016 12:10:54 AM  
**Subject:** S&P stable rating of Westlands  
[Westlands Water District S&P Report 2016 Review.pdf](#)

Hot off the press. As you are aware, Fitch is expected to be issued sometime later.

# RatingsDirect®

---

## Summary:

Westlands Water District, California  
San Luis & Delta-Mendota Water  
Authority; Joint Criteria; Water/Sewer

### Primary Credit Analyst:

Chloe S Weil, San Francisco (1) 415-371-5026; [chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)

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## Summary:

# Westlands Water District, California San Luis & Delta-Mendota Water Authority; Joint Criteria; Water/Sewer

Credit Profile		
<b>Westlands Wtr Dist wtr &amp; swr</b>		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
<b>San Luis &amp; Delta-Mendota Wtr Auth, California</b>		
Westlands Wtr Dist, California		
San Luis & Delta-Mendota Wtr Auth (Westlands Wtr Dist) (BAM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

## Rationale

Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs); and
- 'A+' rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, of which Westlands Water District is the guarantor.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Securities Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1.0x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's extraordinary accounting transaction that were the subject of the proceedings. Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as "vulnerable" and will continue to monitor the district's continuing disclosure practices. However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We believe the district's current financial position remains comparable to that of its peers at the current



rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon.

The ratings further reflect our assessment of the district's:

- Strong market position as the sole provider of irrigation water in a diverse agricultural area;
- Revised rate structure that enhances revenue stability despite significant increases in supplemental water supply costs and fluctuations in water deliveries from the U.S. Bureau of Reclamation's Central Valley Project (CVP);
- Significant progress on the decades-long dispute with the Bureau of Reclamation regarding drainage-impaired soils in the service territory, although the legal settlement remains subject to congressional approval; and
- Future challenges associated with the procurement of additional raw water sources over the long-term horizon.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The valley has been farmed with irrigation water in varying degrees for approximately half a century, and could not exist on its current scale without major water infrastructure programs such as the CVP. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable, and produces high-value permanent crops, such as almonds and pistachios, as well as tomatoes, grapes, and cantaloupes. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

Water sales and purchased water costs are the district's primary revenue sources and expenses. The main water source comes from a 1.195 million acre-foot contract entitlement with the U.S. Bureau of Reclamation's CVP. The district serves as the leading provider of imported water to the region. Supply mix can vary significantly from year to year based on CVP allocations, which are driven by hydrology. The annual safe yield of the confined underground aquifer adds another 200,000 acre-feet and local farmers generally extract as much groundwater as possible, but CVP allocations and groundwater supplies have long been inadequate to meet the region's water demand, which is approximately 1.2 million acre-feet. Accordingly, the district is continually engaged in efforts to supplement its water supply from outside sources. In recent years, the district has provided between one-half and two-thirds of all water consumed in the service area through higher-cost supplemental purchases.

As the district's financial performance is hydrology-dependent, the district performs robust financial forecasting and is proactive in maintaining relationships with other water districts and key stakeholders to ensure adequate water transfers, and to that end has been adept at securing regulatory approvals to receive supplemental water.

Weather-normalized, formal historic trend analysis is performed and updated annually for both revenue and expenses; and we believe regular efforts are made to determine whether one or more factors will cause revenues or expenses to deviate from their long-term trends over the next few years. In addition, beginning in fiscal year 2011, to help alleviate the burden on water users for the increased cost of water in short water supply years, the district's board elected to collect half of the operations & maintenance charges through a land-based charge to landowners rather than through the water rate.

On Sept. 15, 2015, the U.S. Department of Justice and Westlands approved a settlement ending a decades-long dispute over the Bureau of Reclamation's responsibility to provide drainage for the farmland within Westlands. The drainage

settlement requires Westlands to assume full responsibility for drainage management within its boundaries, and will cap CVP deliveries at 75% of the district's contract entitlement. Furthermore, Westlands will be required to retire a minimum of 100,000 acres of land and to repurpose the non-irrigated lands for environmentally friendly uses. We view the settlement as manageable as the district has already acquired 90,000 acres of land for this purpose. The district also has over \$40 million in designated reserves that could be used to meet the remaining requirements under the settlement.

The district's financial performance has been sound in our view over the past five years, despite the impact of the ongoing drought on the district's water supply. Senior lien debt service coverage (DSC) improved to 2.1x in fiscal 2015 from 1.8x in fiscal 2014, while all-in DSC, which adjusts for the district's fixed charges included in operating expenses, the district's subordinated lien obligations, and the impact of one-time land sales on revenues, improved to 1.6x from 1.2x, which we consider good. Based on unaudited results, we expect all-in DSC in fiscal 2016 to remain strong, at about 1.7x, excluding one-time land sales. Based on management's forecast, we expect all-in DSC to decline to about 1.0x in fiscal 2017, which we consider adequate at the current rating level. With a debt-to-capitalization ratio of about 55% as of February 28, 2015, we consider the district to be moderately leveraged.

The district's liquidity position is strong, in our view. The district's cash and cash equivalents as of Feb. 29, 2016 (unaudited) was \$102 million, which represented 314 days' of operating expenses. We understand that the district maintains a strong liquidity position, in part to enable it to opportunistically acquire water rights or otherwise firm up its water supply.

The proposed California WaterFix (the revised approach to the Bay Delta Conservation Plan), a comprehensive plan for the Bay-Delta to address environmental and water supply issues, if adopted and implemented, would entail substantial infrastructure investment in the Delta and implementation of other conservation measures. The capital costs associated with this project will likely be large--most recently estimated at \$14.6 billion, and the district estimates that its proportionate share would be about \$2.4 billion. However, we recognize that the method for financing the project has not been established, and the district has no obligation to fund these future costs. However, we believe that substantial increases in the district's land-based charges and CVP water rates will be necessary to cover the district's (yet to be determined) share of the planned Bay Delta improvements. Even so, we believe that the CVP water may remain the district's lowest cost source of water, and is critical to support the region's agricultural output.

## Outlook

The stable outlook reflects our view of the district's competitive position as the leading provider of supplemental water to a region with strong water demand and scarce water resources. During the two-year outlook period, we anticipate that the district will continue to sustain its good coverage metrics and extremely strong liquidity position while managing its water supply. We also expect the district to finalize its plans regarding the drainage settlement and that the district currently has ample capital funding capacity to execute the requirements under the agreement.

### Upside scenario

Although not anticipated, due to the district's service territory characteristics and potential shifts in the water supply portfolio, we may raise the ratings if the district is able to stabilize and sustain strong coverage metrics and if the local

service economy strengthens and diversifies such that its characteristics are comparable to those of peers at a higher rating level.

#### Downside scenario

We may lower the ratings if changes to the water supply portfolio or unexpected capital needs cause the district's financial metrics to materially erode.

## Related Criteria And Research

#### Related Criteria

- USPFCriteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- USPFCriteria: Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- USPFCriteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- Criteria: Use of CreditWatch And Outlooks, Sept. 14, 2009

#### Related Research

- U.S. State And Local Government Credit Conditions Forecast, Jan. 11, 2016
- U.S. Municipal Water And Sewer Utilities 2014 Sector Outlook: Learning To Do More With Less, Jan. 9, 2014

Ratings Detail (As Of March 28, 2016)		
Westlands Wtr Dist wtr & swr (AGM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
Westlands Wtr Dist (Westlands Wtr Dist) JOINT CRIT		
<i>Long Term Rating</i>	AAA/A-1	Current
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

Many issues are enhanced by bond insurance.

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of Ratings Direct at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

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**From:** env-trinity  
**Sent:** Mon 5/9/2016 8:40:51 PM  
**Subject:** [env-trinity] Fwd: Delta Tunnels News: State Audit & Financial Plan Requested  
[Untitled attachment 00073.txt](#)

Sent from my iPhone

Begin forwarded message:

**From:** Restore the Delta <[barbara@restorethedelta.org](mailto:barbara@restorethedelta.org)>  
**Date:** May 9, 2016 at 12:01:29 PM PDT  
**To:** [tgstoked@gmail.com](mailto:tgstoked@gmail.com) <[tgstoked@gmail.com](mailto:tgstoked@gmail.com)>  
**Subject:** Delta Tunnels News: State Audit & Financial Plan Requested  
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**For Immediate Release: May 9, 2016**

Contact:

Barbara Barrigan-Parrilla, Executive Director, Restore the Delta, 209-479-2053

Tim Stroshane, Policy Analyst, Restore the Delta, 510-847-7556

## **Federal and State Taxes to Fund the Delta Tunnels: Restore the Delta seeks a full accounting of financial plan and state audit**

Stockton, CA — Citing a lack of state or federal legislative authorization, Restore the Delta today sent a [detailed request under the California Public Records Act](#) to a half dozen public agencies, including the California Department of Water Resources seeking details about the funding plan for the proposed Delta Tunnels (CA WaterFix).

The letter was addressed to officials at Zone 7 Water Agency, Westlands Water District, Metropolitan Water District, Kern County Water Agency, and the Santa Clara Valley Water District, in addition to the California Department of Water Resources.

The letter asks the agencies to clarify how "...the continued planning and

design of the proposed project is funded by each major water contractor who may benefit from its construction, operation and maintenance, and who provide security for state and federal debt issuance.”

The group seeks assurance that “...best practices consistent and compliant with the taxation principles of the California Constitution as amended by Propositions 218 and 26...” are being followed. Restore the Delta also seeks information regarding how the US Bureau of Reclamation came to finance Delta Tunnels planning for the Westlands Water District.

[The letter](#) concludes that Restore the Delta will ask the State Auditor and Joint Legislative Audit Committee to investigate the funding plan for the Delta Tunnels proposal.

Barbara Barrigan-Parrilla, executive director of Restore the Delta said, “No finance plan has been made public. Recent Federal investigations have led many urban residents to suspect that they will be forced to subsidize (with higher water rates and property taxes) industrial agriculture on the west side of the San Joaquin Valley, growing crops for export. The agencies promoting the project have been very secretive about how interim project costs have been paid to date and how the project will be paid for in the future. The original concept was a project funded by the beneficiaries, which is important since 70 percent of the water will go to big industrial growers on the west side of the San Joaquin Valley.”

“They’ve said for years that ‘beneficiaries should pay’ for the Delta Tunnels but like a classic bait and switch, they’d like to find ways for unsuspecting urban ratepayers and taxpayers in Silicon Valley and Southern California to pay the majority,” said Tim Stroshane, policy analyst with Restore the Delta and author of today’s letter. “While the project has been around for 10 years, there has been no single, accurate description of how the state and federal governments and their water contractors intend to finance the Delta Tunnels. Restore the Delta seeks information to help accomplish that.”

Among questions for ratepayers are:

- How have the contractors funded planning and design of the Delta Tunnels plan so far?
- What shares have all water contractors paid to date since 2006, and for what purposes?
- Which funding sources, including debt, have Tunnel proponents used and how much funding have they raised, by source?
- Did DWR or water contractors issue debt financing for Tunnels planning and design activities and how was their debt issuance secured?
- Were legal contract procedures followed for planning and design activities



with qualified staff awarded contracts?

– Have funds been raised and spent in accordance with Proposition 218 and Proposition 26?

– Have ratepayers and taxpayers been properly notified if contractors are using specific local revenue sources to raise these funds?

About Restore the Delta:

*Restore the Delta ([restorethedelta.org](http://restorethedelta.org)) is a grassroots campaign by residents and organizations committed to restoring the Sacramento-San Joaquin Delta so that fisheries and farming can thrive there together again. We work through public education and outreach so that all Californians recognize the Sacramento-San Joaquin Bay Delta as part of California's natural heritage, deserving of restoration. We fight for a Delta with waters that are fishable, swimmable, drinkable, and farmable, able to support the health of the estuary, San Francisco Bay, and the ocean beyond. Our coalition envisions the Sacramento-San Joaquin Delta as a place where a vibrant local economy, tourism, recreation, farming, wildlife, and fisheries thrive for future generations as a result of resident efforts to protect our waterway commons. Restore the Delta advocates for local Delta stakeholders to ensure that they have a direct impact on water management decisions that affect the well-being of their communities, in addition to water sustainability policies for all Californians.*

## **LA Times, "Don't blame the smelt: The salmon too reflects the dire state of the California Delta"**

As Robin Abcarian writes in the LA Times, "I have never - not once - heard a politician or a farmer talk smack about salmon." The Delta's hero Bill Jennings is featured in this article on the present collapse of the estuary. [Read at LA Times.](#)

## **Mark Your Calendars!**

We will be holding a 3-day open house and advocacy training.

Participants can drop by at their own convenience during these dates & times or sign up for more formal classes. [Details.](#)

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**Sent:** Thur 10/20/2016 7:14:32 PM  
**Subject:** [env-trinity] Sacramento Bee LTE on tunnels "take" permit/Fitch Ratings Downgrades Westlands' Next Bond Sale/Reclamation charged with wasting \$32 million on Klamath irrigators  
[Untitled attachment 01877.txt](#)

Good Morning

Here are my latest three pieces. The first is today's LTE in the Sacramento Bee about the Department of Water Resources applying for an "incidental take" permit to kill endangered species. The second is a fishsniffer.com article about the Westlands Water District bond ratings being downgraded by Fitch Ratings. The third is a daily kos piece on the Inspector General's report about Reclamation wasting \$32 million on Klamath irrigator subsidies.

Thanks

Dan

<http://www.sacbee.com/opinion/letters-to-the-editor/article109232707.html>

## State applies for tunnels permit

Re "[Brown's projects doomed?](#)" (Capitol & California, Dan Walters, Oct. 16): Gov. Jerry Brown's legacy project, the controversial California WaterFix, is becoming increasingly unpopular among Californians, since it could be one of the most environmentally destructive public works projects in state history.

Brown and other state officials have constantly claimed the Delta tunnels project will "restore" the Delta ecosystem, but they revealed their real plans Oct. 7 when the administration applied for a permit to kill Sacramento River winter-run Chinook salmon, Central Valley steelhead, Delta smelt and other endangered and threatened species with the project.

The Department of Water Resources submitted an "incidental intake" application for the California Department of Fish and Wildlife in alleged "compliance" with the California Endangered Species Act in order to build and operate the tunnels.

The tunnels project won't restore the Delta, but will only drive these struggling fish populations into extinction while costing the ratepayers and taxpayers nearly \$16 billion.

*DAN BACHER, SACRAMENTO*

2. <http://fishsniffer.com/index.php/2016/10/19/fitch-ratings-downgrades-westland-water-districts-next-bond-sale/>



*Photo of Hoopa Valley Tribe protest against Westlands Water District's attacks on the Trinity River by Dan Bacher.*

# Fitch Ratings Downgrades Westland Water District's Next Bond Sale

by Dan Bacher

It looks like the politically powerful Westlands Water District, one of the main backers of Governor Jerry Brown's Delta Tunnels and Congressional legislation to eviscerate protections for Sacramento River Chinook salmon and Delta smelt, is in more financial trouble.

Fitch Ratings downgraded the scheduled October 26 bond sale by Westlands from 'AA-' to 'A+'.

Among the issues facing Westlands Water District, Fitch cites shrinking irrigated acreage, previous financial obligations, and the potential for increased “leveraging” to pay for the Delta Tunnels,” according to Restore the Delta (RTD).

The downgrade reflects Fitch's view that district operations face increased pressure over time,” reported Business Wire, a Berkshire Hathaway Company, on October 17. "Despite improvements to the district's debt profile following this transaction and potentially lower leveraging related to a drainage settlement with the U.S. than previous estimates, the prospect of ongoing escalation in district charges coupled with probable declines in irrigated acreage heightens concentration risk and affordability concern."

The statement includes a warning that overcommitting to the California WaterFix could push the rating even lower.

“Public reports now estimate the district's share of future costs of the California Fix at \$2.5 billion... Significant further leverage by the district in support of the California Fix could apply downward pressure to the ratings,” the Business Wire reported.

Barbara Barrigan-Parrilla, Restore the Delta executive director, quipped, “Bond ratings agencies are like Mom and Dad. Westlands is asking to raise the limit on their credit card again, despite questionable earnings potential. At some point Mom and Dad get out the scissors."

“Tunnel proponents cannot demonstrate how \$17 billion, before cost overruns, will be raised to build the Delta Tunnels. The public does not have a completed and vetted finance plan for the project to examine. When asked who commits to paying the bill, all the water districts point to someone else,” she said.

"What is clear is that ‘someone else’ includes federal taxpayers, California taxpayers, Southern California and Silicon Valley property taxpayers, and urban water ratepayers. These folks will end up subsidizing large agricultural interests like Westlands growers," Barrigan-Parrilla concluded.

The downgrading follows a huge financial scandal that Westlands has been enmeshed in. The federal Securities and Exchange Commission (SEC) on March 10, 2016 charged Westlands, California's largest agricultural water district, with “misleading investors about its financial condition as it issued a \$77 million bond offering."

In addition to charging the district, the SEC also charged its general manager Thomas Birmingham and former assistant general manager Louie David Ciapponi with misleading investors about its financial condition.

“Birmingham jokingly referred to these transactions as ‘a little Enron accounting’ when describing them to the board of directors, which is comprised of Westlands customers,” the SEC reported.

The SEC said Westlands agreed to pay \$125,000 to settle the charges, making it only the second municipal issuer to pay a financial penalty in an SEC enforcement action.

Birmingham agreed to pay a penalty of \$50,000 and Ciapponi agreed to pay a penalty of \$20,000 to settle the charges against them.

“The undisclosed accounting transactions, which a manager referred to as ‘a little Enron accounting,’ benefited customers but left investors in the dark about Westlands Water District's true financial condition,” said Andrew J. Ceresney, Director of the

SEC Enforcement Division. "Issuers must be truthful with investors and we will seek to deter such misconduct through sanctions, including penalties against municipal issuers in appropriate circumstances."

For more information, go to: <http://www.dailykos.com/story/2016/3/10/1499271/-Federal-SEC-Charges-Westlands-Water-District-for-Enron-Accounting>

3. <http://www.dailykos.com/stories/2016/10/16/1583352/-Klamath-Irrigators-Illegal-Piggy-Bank-Broken-Up>



*Photo of Iron Gate Dam on the Klamath River by Dan Bacher.*

## Inspector General charges Reclamation with "wasting" \$32 million on Klamath irrigators

by Dan Bacher

Federal auditors have found that the U.S. Bureau of Reclamation (USBR) wasted \$32 million intended for fish and wildlife and drought relief in the Klamath Basin on subsidies for irrigators.

This scandal takes place as the Yurok, Karuk and Hoopa Valley Tribes, recreational anglers, commercial fishing families and river and coastal communities are suffering from the big cultural and economic loss caused by low numbers of returning salmon on the Klamath River this year, the result of decades of mismanagement by the state and federal governments.

The misspending is revealed in a new audit report that confirms charges leveled last year by the Public Employees for



Environmental Responsibility (PEER).

“We found that USBR did not have the legal authority to enter into the cooperative agreement, resulting in \$32.2 million in wasted funds spent by KWAPA (Klamath Water and Power Agency )under the agreement,” wrote Mary L. Kendall, Deputy Inspector General for the Office of Inspector General, in the audit report dated October 11, 2016.

The report found that the program had done little to restore endangered coho salmon, Lost River suckers and shortnose suckers, as it was intended to do.

Reclamation disputes the Inspector General’s findings. “Reclamation maintains that the reimbursement program has been an important tool in dealing with water issues in an over-allocated basin,” Reclamation claimed in a written statement.

In a news release, PEER described the arrangement between Reclamation and KWAPA as the “Klamath Irrigators’ Illegal Piggy Bank.”

“While the payments have ended, Reclamation refuses to change its practices to prevent future abuse or to recoup moneys illegally spent,” according to PEER, ([www.peer.org/...](http://www.peer.org/))

The Klamath Water and Power Agency was a water and power authority in Klamath Falls, Oregon that received water from federal water projects in northern California and southern Oregon. KWAPA was forced to close its doors on March 31, 2006 due to “disorganization” and complaints filed by PEER. ([ktvl.com/...](http://ktvl.com/))

The Klamath River watershed — and its precious salmon and steelhead populations — have been devastated by a series of droughts in recent years. Over the past several years, Reclamation, under pressure from Tribes, fishermen and environmentalists, has released supplemental cold water flows from Trinity Reservoir into the Trinity River to stop a massive fish kill on the lower Klamath like the one that ravaged the river in September 2002. During that fish kill, the largest of its kind in U.S. history, an estimated 35,000 to 68,000 salmon perished.

PEER said the IG report details how Reclamation diverted \$32 million in federal funds intended for drought contingency planning and helping struggling fish populations:

- In a “waste of funds” wholly lacking in any legal authority;
- Paying for KWAPA salaries, fringe benefits, rent, travel and other expenses whose benefits flowed “primarily to irrigator contractors rather than fish and wildlife,” including \$4.2 million for uses that could not be supported with documentation or were outright “unallowable”; and
- By modifying the KWAPA contract “19 times to expand the scope of activities” and extend the original payment program from 2008 through September 30, 2015.

The Bureau rejects these findings — so the IG is “kicking this intra-agency dispute upstairs” in Interior to the Assistant Secretary for Policy, Management and Budget for resolution, according to PEER.

“Basically, the Bureau of Reclamation became an illicit ATM for favored special interests,” stated PEER Senior Counsel Paula Dinerstein. “To add injury to insult, these improper subsidies were used to aggravate environmental damage by draining shrinking groundwater supplies to benefit irrigators.”

Dinerstein emphasized that these illegal payments would be continuing if Reclamation employees had not blown the whistle.

The whistleblower complaint from two Reclamation biologists filed through PEER prodded the U.S. Office of Special Counsel to order Secretary of Interior Sally Jewell to address the illegal diversion of funds and how her agency would remedy identified violations. “That answer to the Special Counsel was due back in August of 2015 but Reclamation, on the Secretary’s behalf, has obtained extensions totaling 15 months,” said Dinerstein.

“Reclamation is circling its wagons to defend the potentially criminal conduct by its own managers,” said Dinerstein, pointing to the Anti-Deficiency Act that forbids expenditures not authorized by any appropriation and is enforced by criminal fines and/or imprisonment for up to two years. “We will keep pressing for some accountability to taxpayers from Reclamation’s multi-year, multi-million dollar illegal money-laundering operation.”

Jim McCarthy, Communications Director & Southern Oregon Program Manager for WaterWatch, pointed out that not only was this program apparently illegal and wasted millions, but the resulting lack of water on the Klamath’s wildlife refuges, which the program in question was created to provide, “actually killed huge numbers of wildlife in recent years.”

In fact, seventeen conservation groups sent a letter to Interior Secretary Jewell on October 13 asking for emergency water

deliveries for the Klamath refuges to reduce the risk of yet another waterfowl die-off, said McCarthy.

The letter states, “As you are aware, since 2012, tens of thousands of birds on these refuges have died for lack of water resulting from allocation decisions made within the Department of the Interior. When few wetland acres are available on these refuges due to lack of water, large numbers of waterfowl pack together during migration periods, leading to lethal disease outbreaks. Refuge staff estimated that some 20,000 birds perished this way in 2014. Similar conditions on these refuges sparked massive waterfowl die-offs in 2012 and 2013.”

Mike Orcutt, Fisheries Director of the Hoopa Valley Tribe, said the water bank created under the agreement between Reclamation and KWAPA was supposed to improve water quality and the fishery in the Klamath Basin, but that didn’t happen, according to the IG report.

“Looking to the future, the Tribe receives their money for fish restoration from the same budget and the budget has been flatlined. We get the aftermath of that flatlined budget,” he said.

Another potential impact is that this scandal could impact the trust in the Bureau by Congress and make it harder for similar future agreements to be funded.

“You’re going to be hard-pressed to get the money if you don’t use the funds for what you were supposed to,” Orcutt told the Eureka Times-Standard. ([www.times-standard.com/...](http://www.times-standard.com/...))

On July 29, the Hoopa Valley Tribe filed a lawsuit against the federal government for violations of the Endangered Species Act (ESA) over management actions that have imperiled Coho salmon on the Klamath River.

The Tribe filed the litigation against the Bureau of Reclamation, the same agency involved in the wasting of \$32 million, and the National Marine Fisheries Service in the U.S. District Court for the Northern District of California, Oakland Division, to protect the Coho salmon, listed as an endangered species under the ESA. The Trinity River, the largest tributary of the Klamath, runs through the Hoopa Valley Indian Reservation.

The Hoopa lawsuit is expected to be followed by several other lawsuits, including litigation by the Yurok Tribe, Karuk Tribe and Pacific Coast Federation of Fishermen’s Associations (PCFFA), Institute for Fisheries Resources, Klamath Riverkeeper and Earthjustice. ([www.dailykos.com/...](http://www.dailykos.com/...))

Hopefully, this illegal spending of \$32 million in federal funds to further subsidize already heavily-subsidized agribusiness interests will result in criminal convictions if the allegations by PEER are proven true.

This is not the first time that state and government officials have diverted millions of dollars designed to restore fish and wildlife for other purposes. For example, the Department of Interior’s Inspector General earlier this year opened an investigation into the possible illegal use of millions of dollars by the California Department of Water Resources (DWR) in preparing the Environmental Impact Statement (EIS) for Governor Jerry Brown’s controversial Delta Tunnels Plan. ([www.counterpunch.org/...](http://www.counterpunch.org/...))

The investigation resulted from a complaint PEER filed on the behalf of a Bureau of Reclamation employee on February 19, 2016. The complaint, made public in a statement from PEER on April 11, details how a funding agreement with DWR is “illegally siphoning off funds that are supposed to benefit fish and wildlife to a project that will principally benefit irrigators” under the California Water Fix, the newest name for the Delta Tunnels plan.

The Delta Tunnels project is deeply connected to the Klamath River watershed. The two 35-mile long tunnels under the Delta would hasten the extinction of Central Valley steelhead, Sacramento River winter-run Chinook salmon, Delta and longfin smelt, green sturgeon and other fish species. The project would also imperil the salmon and steelhead populations on the Trinity and Klamath rivers, a fishery that for thousands of years has played an integral part in the culture, religion and food supply of the Yurok, Karuk and Hoopa Valley Tribes.

[Read the IG audit report](#)

[Look at still pending probe from the Office of Special Counsel](#)

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env-trinity mailing list  
env-trinity@velocipede.dcn.davis.ca.us  
<http://www2.dcn.org/mailman/listinfo/env-trinity>

**To:** Patricia Schifferle[pacificadvocates@hotmail.com]  
**Cc:** bormonde@westlandswater.org[bormonde@westlandswater.org]  
**Sent:** Fri 2/26/2016 12:55:50 AM  
**Subject:** RE: PRA Request PCL et. al Re Financial Reports of Land Sale  
[2014-11-25 Board Minutes.pdf](#)  
[07 15 14 Minutes.pdf](#)  
[Peck Exhibits.pdf](#)  
[Peck Settlement.pdf](#)  
[2014-7-1 Second Amendment fully executed.pdf](#)  
[2015-6-9 Tranquility 3rd Amendment fully executed.pdf](#)  
[PSA RV4.pdf](#)  
[2013-7-16 First Amendment.pdf](#)  
[silveira.pdf](#)  
[8 party.pdf](#)  
[North Star PSA.pdf](#)  
[North Star Secretary Certification of Minutes.pdf](#)  
[2010-2-18 Option Agrmt.pdf](#)  
[2010-8-24 Amended and Restated Option Agreement.pdf](#)  
[2011-12-14 North Star Amendment to amended.pdf](#)  
[2013-3-8 Second Amendment to Amended.pdf](#)

Dear Ms. Schifferle,

Attached are documents responsive to your request by your email on January 21, 2016 pursuant to the California Public Records Act. Specifically the following is provided responsive to your request:

1. The purchase and sales agreement for the sale of land of \$ 22,594,664 reported to the Security and Exchange Commission disclosure filings and audited financial records for the fiscal year 2014-2015. The documents for the purchase and sales agreements represent two (2) separate transactions.
2. The appraisal for land that was sold – No appraisal was conducted for either of the sales.
3. The Board Resolution and Westlands Water District minutes regarding the sale. Attached are minutes of the Board of Directors meetings for July 15, 2014 and November 25, 2014 approving the sale of the land and directing staff to execute the necessary documents to execute the sale.
4. Any previous purchase and sales agreement that established the original cost of the land. Attached are documents related to a court approved settlement between the USBR, et.al. and Sumner Peck Ranch, et.al. related to the purchase of drainage impaired lands that included the purchase of the property for which you inquired.
5. Calculations used to support the \$22,594,664 of net gain. Included are record of journal entries with supporting documents accounting for the net gain on sale of the land.

Regards,  
Dan Pope  
Chief Operating Officer  
Westlands Water District  
559.241.6204

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**From:** Patricia Schifferle [mailto:pacificadvocates@hotmail.com]  
**Sent:** Friday, February 19, 2016 1:32 PM  
**To:** 'Dan Pope'  
**Cc:** bormonde@westlandswater.org  
**Subject:** RE: PRA Request PCL et. al Re Financial Reports of Land Sale

Dear Mr. Pope,

What is the status of the PCL et. al. PRA request?

Thank you for your assistance,

Patricia Schifferle  
530 550 0219

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**From:** Dan Pope [mailto:dpope@westlandswater.org]



**Sent:** Monday, February 01, 2016 9:19 AM  
**To:** 'Patricia Schifferle'  
**Cc:** [bormonde@westlandswater.org](mailto:bormonde@westlandswater.org)  
**Subject:** RE: PRA Request PCL et. al Re Financial Reports of Land Sale

Dear Ms. Schifferle,

Pursuant to your request for information according to the California Public Records Act, we should be able to provide any documents responsive to your request by February 19<sup>th</sup>.

Best regards,  
Dan Pope  
Chief Operating Officer  
Westlands Water District  
559.241.6204

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**From:** Patricia Schifferle [<mailto:pacificadvocates@hotmail.com>]  
**Sent:** Thursday, January 21, 2016 2:16 PM  
**To:** 'Dan Pope'  
**Cc:** [bormonde@westlandswater.org](mailto:bormonde@westlandswater.org)  
**Subject:** PRA Request PCL et. al Re Financial Reports of Land Sale

Dear Mr. Pope,

On behalf of the Planning and Conservation League, CWIN and the Southern California Water Alliance, these nonprofit groups request pursuant to the provisions of the California Public Records Act (Gov. Code, §§ 6250 et seq.), the following documents:

1. The purchase and sales agreement the sale of land of \$22,594,664 reported in the Security and Exchange disclosure filings and 2015 audited financial records for 2015.
2. The appraisal for land that was sold.
3. The Board Resolution and Westlands Water District minutes regarding the sale.
4. Any previous purchase and sales agreement that established the original cost for the land.
5. Calculations used to support the \$22,594,664 of net gain.

To save copying charges and mailing costs, an electronic copy of the documents would be satisfactory.

Thank you for your assistance.

Regards,  
Patricia Schifferle  
15652 Alder Creek Rd  
Truckee Ca 96161  
530 550 0291



## Westlands Water District

3130 N. Fresno Street, P.O. Box 6056, Fresno, California 93703-6056, (559) 224-1523, FAX (559) 241-6277

February 16, 2012

North Star Solar LLC  
Attn: Sandy Taylor  
83 S. King Street, Suite 200  
Seattle, WA 98104

**RE: *First Amendment to Amended and Restated Option Agreement and  
Memorandum of First Amendment to Amended and Restated Option  
Agreement***

Dear Ms. Taylor:

Enclosed are two documents. The enclosed documents include one original of the First Amendment to Amended and Restated Option Agreement and the Memorandum of First Amendment to Amended and Restated Option Agreement. The Memorandum has been notarized and both documents are executed. Once North Star Solar LLC has fully executed, please send the First Amendment to Amended and Restated Option Agreement to the Chicago Title Company and the Memorandum to the County. As soon as the Memorandum is filed, please send Westlands Water District a conformed copy.

If you have any questions, please call 559-241-6215.

Sincerely,

Tom Glover  
Deputy General Manager Resources

Enclosures: 2

## FIRST AMENDMENT TO AMENDED AND RESTATED OPTION AGREEMENT

This FIRST AMENDMENT TO AMENDED AND RESTATED OPTION AGREEMENT (this “**First Amendment**”) is made, dated, and effective as of December 14, 2011 (the “**Effective Date**”), by and between Westlands Water District, a California water district (“**Seller**”) and North Star Solar LLC, a Delaware limited liability company, or nominee (“**Buyer**”). Each of Seller and Buyer is sometimes referred to as a “**Party**” and collectively as the “**Parties**.”

### RECITALS

A. Buyer and Seller are parties to that certain Amended and Restated Option Agreement dated August 24, 2010, a memorandum of which was recorded in the real property records of Fresno County, California on September 14, 2010 as Document No. 2010-011418, together with that certain Agreement Canceling Quitclaim and Reinstating Amended and Restated Option Agreement and Memorandum of Option, also dated August 24, 2010, recorded October 4, 2010 as Document No. 2010-0131474 in the Official Records of Fresno County (collectively, the “**Option Agreement**”) in connection with certain real property owned by Seller and more particularly described on the attached Exhibit A and incorporated herein by this reference.

B. Buyer and Seller desire to amend the Option Agreement pursuant to this First Amendment for the purposes of extending the Option Term. Capitalized terms used but not defined herein shall have the meanings given to them in the Option Agreement.

NOW THEREFORE, in consideration of the mutual terms and conditions contained herein, the Parties agree to amend the Option Agreement as follows:

1. Extension of Option Term (Section 2.5). The Parties acknowledge that Buyer has exercised Extension Periods 1-5 as described in Section 2.5 of the Option Agreement. The Parties agree that in lieu of the sixth (6<sup>th</sup>) Extension Period of one (1) year described in Section 2.5 of the Option Agreement, Buyer shall have up to eight (8) quarterly Extension Periods as described below (designated 6(a)-6(h)).

Extension Option	Extension Period
6(a)	January 1, 2012 – March 31, 2012
6(b)	April 1, 2012 – June 30, 2012
6(c)	July 1, 2012 – September 30, 2012
6(d)	October 1, 2012 – December 31, 2012
6(e)	January 1, 2013 – March 31, 2013
6(f)	April 1, 2013 – June 30, 2013
6(g)	July 1, 2013 – September 30, 2013

6(h)	October 1, 2013 – December 31, 2013
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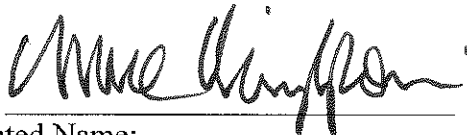
2. The Extension Deposit for each calendar quarter of the sixth (6th) Extension Period shall be the sum of One Hundred Twenty-Five Thousand Dollars (\$125,000.00). Buyer shall exercise the right to initiate the sixth (6th) Extension Period and to extend the same for each calendar quarter set forth above by (a) giving written notice of such extension to Seller and the Title Company (which notice shall specify the date to which the Option Term has been extended), and (b) depositing with the Title Company the quarterly fee for each quarter to which the extension notice applies, which fee(s) shall be credited against the Purchase Price. For the avoidance of doubt, Buyer shall have the right but not the obligation to opt for all eight (8) calendar quarters of the sixth Extension Option in the manner described above.

3. Except as expressly modified by this Amendment, all terms of the Option Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Amendment to the Amended and Restated Option Agreement as of the Effective Date.

**“Seller”**

**Westlands Water District,**  
a California water district

By:   
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**“Buyer”**

**North Star Solar LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

### Property Description

All of that certain real property located in Fresno County, California, more particularly described as follows:

#### Parcel A:

Lots 49 to 52, inclusive, Lots 61 to 64, inclusive, Lots 67 and 68, Lots 77 and 78, and Lot E of Valley Verde Colony, according to the map thereof recorded in Book 3 Page 59 of Record of Surveys, Fresno County Records. Together with that portion of Kearney Avenue (formerly Sultana Avenue) (abandoned), which would pass by a conveyance of said land under Sections 1112 and 831 of the Civil Code.

EXCEPTING THEREFROM an undivided one-half interest in all oil, gas and minerals on, in and under said real estate, with the right at all times to explore, drill for, mine and remove the same, together with all other rights and privileges incident thereto, as reserved in the deed from General American Life Insurance Company, a corporation, to Russell Giffen, dated March 14, 1941, recorded March 25, 1941, in Book 1904 Page 497 of Official Records, Document No. 11004.

ALSO EXCEPTING THEREFROM an undivided 25% of 100% of all oil, gas and other hydrocarbons and minerals on, in or under said real property, as reserved in the deed from Anderson, Clayton & Co., a Delaware Corporation, to Dudley J. Silveira, et al, recorded December 31, 1974, as Document No. 96737.

APN 019-050-56ST

#### Parcel B:

Lots 65, 66, 79 and 80 of Valley Verde Colony, according to the map thereof recorded in Book 3 Page 59 of Record of Surveys, Fresno County Records. Together with that portion of Kearney Avenue (formerly Sultana Avenue) (abandoned), which would pass by a conveyance of said land under Sections 1112 and 831 of the Civil Code.

EXCEPTING THEREFROM an undivided one-half interest in all oil, gas and minerals on, in or under said real estate, with the right at all times to explore, drill for, mine and remove the same, together with all other rights and privileges incident thereto, as reserved in the deed from Great American Life Insurance Company, a corporation, to Russell Giffen, dated March 14, 1941, recorded March 25, 1941, in Book 1904 Page 497 of Official Records, Document No. 11004.

ALSO EXCEPTING THEREFROM an undivided 25% of 100% of all oil, gas and other hydrocarbons and minerals on, in or under said real property, as reserved in the deed from Anderson, Clayton & Co., a Delaware Corporation, to Dudley J. Silveira, et al, recorded December 31, 1974, as Document No. 96737.

APN: 019-050-55ST

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Kapla Law PLLC  
8205 31<sup>st</sup> Ave NE  
Seattle, WA 98115  
Attn: Kathleen D. Kapla

---

**MEMORANDUM OF FIRST AMENDMENT TO AMENDED AND RESTATED  
OPTION AGREEMENT**

THIS MEMORANDUM OF FIRST AMENDMENT TO AMENDED AND RESTATED OPTION AMENDMENT (this "**Memorandum**") is made and dated December 14, 2011 (the "**Effective Date**") by and between the **WESTLANDS WATER DISTRICT**, a California water district ("**Seller**"), whose address is 3130 North Fresno Street, Fresno, CA 93703-6056, Attn: Mr. Tom Glover, and **NORTH STAR SOLAR LLC**, a Delaware limited liability company ("**Buyer**"), whose address is North Star Solar LLC, 701B Winslow Way East, Bainbridge Island, WA 98110, Attn: Dana Zentz. Each of Seller and Buyer is sometimes referred to as a "Party" and collectively as the "Parties."

**RECITALS**

A. Seller is the owner of that certain real property located in Fresno County, California, more particularly described on the attached Exhibit A and incorporated herein by this reference (the "**Property**").

B. Buyer and Seller are parties to that certain Amended and Restated Option Agreement dated August 24, 2010, a memorandum of which was recorded in the real property records of Fresno County, California on September 14, 2010 as Document No. 2010-011418, together with that certain Agreement Canceling Quitclaim and Reinstating Amended and Restated Option Agreement and Memorandum of Option, also dated August 24, 2010, recorded October 4, 2010 as Document No. 2010-0131474 in the Official Records of Fresno County (collectively, the "**Option Agreement**") in connection with the Property.

C. Buyer and Seller have further amended the Option Agreement pursuant to that certain First Amendment to Amended and Restated Option Agreement dated of even date herewith (the "**First Amendment**") for the purposes of extending the Option Term.

D. Buyer and Seller have executed and acknowledged this Memorandum to memorialize of record the First Amendment and extension of the Option Term. Capitalized terms not otherwise defined in this Memorandum shall have the meanings provided in the Option Agreement.

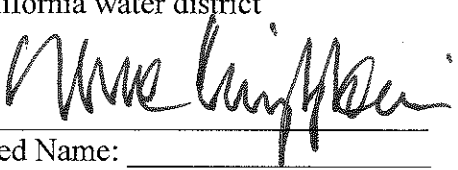
NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller provide record notice of the following:

1. **Extension of Option Term.** The Parties hereby agree that, commencing on January 1, 2012, Buyer shall have the right to extend the Option Term for up to eight (8) separate, consecutive calendar quarters (January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31), ending December 31, 2013. For the avoidance of doubt, the term "Option Term," as used in the Option Agreement as amended from time to time, shall mean that period commencing on October 1, 2010 and expiring on December 31, 2013, unless earlier terminated or Buyer exercises the Option, as provided in the Option Agreement.
2. **Full Force and Effect.** Except as explicitly amended by the First Amendment, the Option Agreement is ratified and confirmed, and is and shall continue to be in full force and effect.
3. **Counterparts.** This Memorandum may be executed in two or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same instrument.
4. **Governing Law.** This Memorandum shall be governed by and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, Buyer and Seller have caused this Memorandum to be executed and delivered by their duly authorized representatives as of the Effective Date.

**"Seller"**

Westlands Water District,  
a California water district

By:   
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**"Buyer"**

North Star Solar LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

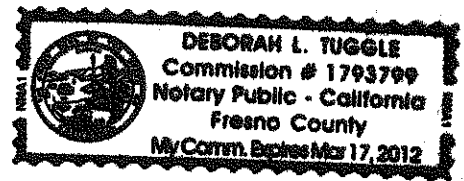
STATE OF CALIFORNIA   )  
  )  
COUNTY OF FRESNO    )

On February 15, 2012 before me, Deborah L. Tuggle <sup>Notary Public</sup>, personally appeared Dave Ciappone, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Deborah L. Tuggle  
Notary Public  
Print Name: Deborah L. Tuggle  
My commission expires: March 17, 2012



STATE OF WASHINGTON   )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012 by Dana Zentz as Managing Member of **NORTH STAR SOLAR LLC**, a Delaware limited liability company, on its behalf.

Notary Signature: \_\_\_\_\_  
Notary Printed Name: \_\_\_\_\_  
Notary Public for Washington  
Commission No.: \_\_\_\_\_  
My commission expires: \_\_\_\_\_



EXHIBIT A  
Property Description

All of that certain real property located in Fresno County, California, more particularly described as follows:

Parcel A:

Lots 49 to 52, inclusive, Lots 61 to 64, inclusive, Lots 67 and 68, Lots 77 and 78, and Lot E of Valley Verde Colony, according to the map thereof recorded in Book 3 Page 59 of Record of Surveys, Fresno County Records. Together with that portion of Kearney Avenue (formerly Sultana Avenue) (abandoned), which would pass by a conveyance of said land under Sections 1112 and 831 of the Civil Code.

EXCEPTING THEREFROM an undivided one-half interest in all oil, gas and minerals on, in and under said real estate, with the right at all times to explore, drill for, mine and remove the same, together with all other rights and privileges incident thereto, as reserved in the deed from General American Life Insurance Company, a corporation, to Russell Giffen, dated March 14, 1941, recorded March 25, 1941, in Book 1904 Page 497 of Official Records, Document No. 11004.

ALSO EXCEPTING THEREFROM an undivided 25% of 100% of all oil, gas and other hydrocarbons and minerals on, in or under said real property, as reserved in the deed from Anderson, Clayton & Co., a Delaware Corporation, to Dudley J. Silveira, et al, recorded December 31, 1974, as Document No. 96737.

APN 019-050-56ST

Parcel B:

Lots 65, 66, 79 and 80 of Valley Verde Colony, according to the map thereof recorded in Book 3 Page 59 of Record of Surveys, Fresno County Records. Together with that portion of Kearney Avenue (formerly Sultana Avenue) (abandoned), which would pass by a conveyance of said land under Sections 1112 and 831 of the Civil Code.

EXCEPTING THEREFROM an undivided one-half interest in all oil, gas and minerals on, in or under said real estate, with the right at all times to explore, drill for, mine and remove the same, together with all other rights and privileges incident thereto, as reserved in the deed from Great American Life Insurance Company, a corporation, to Russell Giffen, dated March 14, 1941, recorded March 25, 1941, in Book 1904 Page 497 of Official Records, Document No. 11004.

ALSO EXCEPTING THEREFROM an undivided 25% of 100% of all oil, gas and other hydrocarbons and minerals on, in or under said real property, as reserved in the deed from Anderson, Clayton & Co., a Delaware Corporation, to Dudley J. Silveira, et al, recorded December 31, 1974, as Document No. 96737.

APN: 019-050-55ST

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[illegible]



# Fidelity National Title Compa.

601 California Street, Suite 1501, San Francisco, CA 94108

Phone: (415)981-5720 | FAX: (415)837-2311

## ESTIMATED SELLER'S STATEMENT

**Settlement Date:** June 27, 2014

**Disbursement Date:** June 27, 2014

**Buyer:** HA North Star, LLC

135 Main Street 6th Floor

San Francisco, CA 94105

**Escrow Number:** FSF-0202-FSFM-2021400439

**Escrow Officer:** Rita Lin

**Seller:** Westlands Water District, a public agency

**Property:** Vacant Land in Fresno County

Fresno, CA 93729

Parcel ID(s): 019-050-56ST 019-050-55ST

	\$ DEBIT	\$ CREDIT
<b>FINANCIAL CONSIDERATION</b>		
Contract Sales Price		9,402,300.00
Prepaid Deposit from buyer to seller	1,710,000.00	
<b>TITLE &amp; ESCROW CHARGES</b>		
1/2 each		
Fidelity National Title Company	3,500.00	
<b>RECORDING CHARGES</b>		
Fresno County Transfer Tax	Fidelity National Title Company	10,342.75
<b>MISCELLANEOUS CHARGES</b>		
CLTA Owner's Policy Premium(Fee interest) Old Republic Title Company	9,402.30	
<b>Subtotals</b>	1,733,245.05	9,402,300.00
<b>Balance Due TO Seller</b>	7,669,054.95	
<b>TOTALS</b>	9,402,300.00	9,402,300.00

I have carefully reviewed the Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the Settlement Statement.

**SELLER:**

Westlands Water District, a public agency

**BY:**

Name: Dave Ciapponi

Title: Secretary

# General Ledger

## Transactions Report - Detail

### 7/1/2014 Through 7/31/2014

Transaction Per. Date	Post Date	Journal	Batch Number	Posting Units Comment	Beginning Balance	Debit	Credit	Ending Balance	Net Change
<b>GL Account Number: 15420-00-00-00-00-00 SUSPENSE - GENERAL</b>									
05	7/15/2014	7/15/2014	CM-442	CMCM-0000448	0.000		1,231.84	(1,231.84)	(1,231.84)
				Invoice 16 of 20 Invoice 5 of 8	0.00	0.00			
05		7/15/2014	JE-140718	GLGJ-0000684	0.000	0.00	2,478.68	(3,710.52)	(2,478.68)
05		7/15/2014	JE-140719	GLGJ-0000685	0.000	1,231.84	0.00	(2,478.68)	1,231.84
05		7/15/2014	JE-140720	GLGJ-0000685	0.000	2,478.68	0.00	0.00	2,478.68
05	7/17/2014	7/17/2014	CM-449	CMCM-0000455	0.000	0.00	7,669,054.95	(7,669,054.95)	(7,669,054.95)
				Invoice 17 of 20 Invoice 6 of 8					
05	7/31/2014	7/31/2014	CM-459	CMCM-0000465	0.000	0.00	1,231.84	(7,670,286.79)	(1,231.84)
				Invoice 19 of 20 Invoice 8 of 8					
05		7/31/2014	JE-140739	GLGJ-0000692	0.000	0.00	2,478.68	(7,672,765.47)	(2,478.68)
05		7/31/2014	JE-140741	GLGJ-0000692	0.000	1,231.84	0.00	(7,671,533.63)	1,231.84
05		7/31/2014	JE-140742	GLGJ-0000692	0.000	2,478.68	0.00	(7,669,054.95)	2,478.68
05		7/31/2014	JE-140760	GLGJ-0000700	0.000	7,669,054.95	0.00	0.00	7,669,054.95
<b>GL Account Number: 15420-00-00-00-00-00 SUSPENSE - GENERAL</b>					0.00	7,676,475.99	7,676,475.99	0.00	0.00
<b>Report Total:</b>						7,676,475.99	7,676,475.99		0.00

RECORDING REQUESTED BY

Chicago Title Company FBO

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENT TO:

Name Westlands Water District

Street P.O. Box 6056

Address Fresno, CA. 93703-6056

City &  
State  
Zip

Title Order No. \_\_\_\_\_ Escrow No. 5633442-

SCF



FRESNO County Recorder

Robert C. Werner

DOC- 2004-0221852

Acct 2-Chicago Title Company

Monday, OCT 04, 2004 08:00:00

Ttl Pd \$0.00

Nbr-0001615033

RPR/R1/1-10

T 355 Legal (2-94)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

## Grant Deed

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS \$ exempt

☒ unincorporated area ☐ City of \_\_\_\_\_

Parcel No. 019-050-19s, 48s, 55s, 56s, 59s; 019-110-03s, 04s, 05s,

☐ computed on full value of interest or property conveyed, or 06s, 13s

☐ computed on full value less value of liens or encumbrances remaining at time of sale, and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
AS SET FORTH AT GRANTOR EXHIBIT ATTACHED HERETO AND MADE A PART HEREOF

hereby GRANT(S) to WESTLANDS WATER DISTRICT, a public agency

the following described real property in the  
county of Fresno, state of California:

AS DESCRIBED AT EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE  
MADE A PART HEREOF.

Dated September 28, 2004

SEE SIGNATURE PAGE ATTACHED  
HERETO AND BY THIS REFERENCE  
MADE A PART HEREOF.

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_ } S.S.

On \_\_\_\_\_ before me,

a Notary Public in and for said County and State, personally appeared

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature \_\_\_\_\_

(This area for official notarial seal)

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE

Name

Street Address

City & State

14-07-60

PARCEL INFORMATION							
APN #	County	Escrow #	Seller's Name	Purchase Program	Assessable Acres	Irrigable Acres	Closing Date
457 019 050 55S	Fresno	5633442-SCF	D. Silveira	Peck	160.13	155.00	10/4/2004
458 019 050 56S	Fresno	5633442-SCF	D. Silveira	Peck	469.69	469.00	10/4/2004

155.00\*+  
469.00 +  
624.00 \*

14-07-60

## PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (“Agreement”) is made effective as of January 21, 2011 (the “Effective Date”), by and between Westlands Water District, a California water district (“Seller”), and SiteCo, LLC, a Delaware limited liability company, or nominee (“Buyer”), with respect to the following facts and circumstances:

A. Seller is the owner of certain real property located in Fresno County, California, consisting of eight (8) separate groups (each, a “Group” and collectively, the “Groups”) containing a total of approximately 3,574.73 acres, which Groups contain separate parcels (each, a “Parcel” and collectively, the “Parcels”), as more particularly described in Exhibit A to this Agreement.

The real property described in Exhibit A is referred to collectively below as the “Land”, and together with any easements or similar rights appurtenant thereto is referred to below as the “Property”. The term the “Property” shall not include any mineral rights located beneath the surface of the Land, ownership of which shall remain with Seller subject to the terms and conditions of this Agreement.

B. Seller desires to sell the Property [subject to the reservations described in **Section 1(a)**] below to Buyer, and Buyer desires to purchase the Property, on the terms and subject to the conditions of this Agreement.

THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Purchase and Sale.

(a) Upon the terms and subject to the conditions set forth in this Agreement, Seller shall sell the Property to Buyer, and Buyer shall purchase the Property from Seller. The Property shall not include (i) any rights to minerals, oil, gas and other hydrocarbon substances or (ii) any rights to water deliveries appurtenant to or associated with the Property by virtue of its location within Seller’s service area. Seller shall also reserve an exclusive easement (the “Groundwater Easement”) for the right to use any groundwater underlying or otherwise appurtenant to the Property, including the exclusive right to drill, operate, maintain, repair and replace water wells and locate pipelines on the Property at locations that do not unreasonably interfere with any solar power generation and transmission facilities located on the Property, which easement shall be in a form mutually agreed to by Seller and Buyer before the end of the Feasibility Period (defined below). Notwithstanding the foregoing, Buyer shall be granted the right to use such groundwater as may be required for the construction and ongoing maintenance, repair and replacement of any solar power generation facilities to be located on the Property. Seller shall retain no surface entry rights onto the Property for the purpose of exploiting Seller’s retained mineral rights following the Closing Date (defined below) and Seller covenants that it shall not, following the Closing Date, explore for, extract, or produce minerals from the Property by utilizing a method that would impact surface uses of the Property. Notwithstanding anything

to the contrary herein, Seller and Buyer acknowledge and agree that Buyer, at its sole option, may elect to eliminate certain portions of the parcel commonly known as APN 028-101-70T, which is part of Group A as shown on Exhibit A hereto, from the Land to be purchased hereunder, which election shall be made at the time of delivery of Buyer's Closing Notice (defined below).

(b) The transactions contemplated by this Agreement shall be completed through an escrow (the "Escrow") established with First American Title Company, National Commercial Services, 4380 La Jolla Village Drive, Suite 200, San Diego, California 92122, Attn: Verna Gregory ("Escrow Holder"). This Agreement shall constitute the instructions for the Escrow upon acceptance by Escrow Holder. In the event of a conflict between this Agreement and Escrow Holder's standard escrow conditions, the terms of this Agreement shall control.

2. Purchase Price. The price for the purchase of the Property shall be equal to the product of (a) Fifteen Thousand Dollars (\$15,000.00) and (b) the number of acres in the Property on the Closing Date (the "Purchase Price"). The Purchase Price shall be paid in cash. Within 7 business days of the execution and delivery of this Agreement, Buyer shall deposit with Escrow Holder the sum of \$3,000.00 (the "Deposit"). The Deposit shall be immediately released by Escrow Holder to Seller without further instructions of any kind from the parties on the day following the conclusion of the Feasibility Period unless Buyer has exercised its right to terminate this Agreement pursuant to **Section 4(e)**. Notwithstanding the provisions of the preceding sentence, upon the request of either party, Buyer and Seller shall execute additional instructions to Escrow Holder specifically authorizing the disbursement of the Deposit and any Extension Payments described in **Section 8(b)**. The Deposit shall be (i) non-refundable to Buyer, except in the event of Seller's default under this Agreement or as otherwise provided in **Sections 6(e)** [in the case of recordation of a title encumbrance that is subject to delivery of a Gap Notice], **4(a)** [in the case of Seller's refusal to permit a Phase II environmental audit] and **5(b)** [in the case of damage to the Property prior to Closing where Buyer does not elect to proceed to Closing] below. The Deposit shall be credited towards the Purchase Price payable at the first Closing (defined below) in accordance with **Section 13(a)**, and the balance of the Purchase Price shall be deposited by Buyer in accordance with this Agreement as provided in **Section 10(b)**.

3. Vesting. Title to the Property and all associated rights shall vest as directed by Buyer prior to the Closing. Until 10 days prior to the Closing, Buyer shall have the unrestricted right to designate one or more nominees to take title to any or all of the Property. Should Buyer designate a nominee or otherwise assign any of its rights and obligations under this Agreement, each such nominee or assignee shall succeed to the specified rights and obligations of Buyer under this Agreement and the Escrow and shall be recognized by both Seller and Escrow Holder as possessing all such rights and obligations, and all references to "Buyer" herein shall be deemed to refer to such nominee or assignee. However, no such nomination or assignment shall relieve Buyer of its obligations under this Agreement, which shall remain in effect.



4. Due Diligence and Feasibility Period.

(a) From the Effective Date of this Agreement set forth above and for 120 days thereafter (the "Feasibility Period"), Buyer and Buyer's designated agents shall have access to and the right to enter upon the Property at all reasonable times for purposes of conducting inspections, environmental audits or surveys, studies and tests of the Property including, without limitation, tests of the soil, roads and other improvements and measurement of meteorological characteristics of the Property that may require the installation of a meteorological station. (Placement of any meteorological station shall be subject to Seller's reasonable discretion and shall not unreasonably interfere with the farming operations of Seller's tenants, if any). Such inspection may also include, without limitation, (i) preparation of Phase I environmental reports; (ii) investigation of the water table, including the existence of shallow groundwater; (iii) soil analyses; (iv) environmental and engineering tests; and (v) other necessary investigations as determined by Buyer in its sole discretion. Buyer shall have the right to take samples of soil and water from the surface and subsurface of the Property. Within 5 days after the Effective Date, Seller shall deliver to Buyer or make available to Buyer and its employees, representatives, counsel and consultants access to all of its books, records and files relating to the Property that are in Seller's possession or control, including, without limitation, all tenant and mineral leases and amendments thereto; all contracts pertaining to the use and operation of the Property; permits and entitlements; any materials or reports concerning the physical condition of the Property; the most recent survey of the Property; and such other documents and information reasonably requested by Buyer (collectively, the "Due Diligence Materials"). Buyer shall not obtain a Phase II environmental audit report without Seller's written consent to be given within 5 business days of request therefore by Buyer, which Seller may withhold in its sole and absolute discretion. If Seller refuses to consent to a Phase II report, Buyer may terminate this Agreement, in which event the Deposit and any Extension Payments previously paid to Seller shall be immediately refunded to Buyer. In conducting the foregoing due diligence investigations, Buyer shall use commercially reasonable efforts to minimize any damage to crops located on the Property, if any. Buyer shall reimburse Seller's tenants, if any, for crop damage resulting from the conduct of Buyer's investigations. Seller agrees to cooperate fully with Buyer in assisting Buyer to complete Buyer's investigations. Notwithstanding anything to the contrary herein, Buyer shall have the ongoing right through the period ending on the final Closing Date to undertake any and all of the activities described in this **Section 4(a)** and any other investigatory activities permitted hereunder.

(b) Buyer shall provide Seller with a copy of any report or other document pertaining to the Property obtained by Buyer except to the extent any such report or document constitutes a trade secret or the proprietary information of Buyer. All reports and all other information and documents obtained by Buyer during its inspection of the Property shall be maintained in confidence by Buyer. Buyer shall not disclose any adverse conditions affecting the Property unless and until Buyer purchases the Property, unless such disclosure is required by law or in connection with any permitting or entitlement processes being pursued by Buyer. Except as otherwise provided herein, Seller does not make any representation or warranty whatsoever regarding the completeness or accuracy of information provided to Buyer by Seller or on Seller's behalf regarding the Property. Buyer shall purchase the Property on the basis of its own investigations, as described in **Section 16**.

(c) Buyer shall indemnify, defend and hold Seller harmless from any and all suits, causes of action, legal or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorneys fees and expenses of whatever kind and nature, in law or in equity, known or unknown (collectively, “Claims”) that result from the acts or omissions of Buyer or its agents in performing any inspection and/or testing activity on or about the Property; provided, this indemnity shall not apply to conditions existing at the Property that are merely discovered by Buyer or to any act or omission of Seller, its employees, representatives or agents. Further, Buyer shall promptly pay all costs, fees and expenses incurred as a result of or associated with such inspection work done or caused to be done by it on the Property as permitted by this Section and shall keep the Property free from any and all mechanics or similar liens or charges resulting from such inspection work. As provided in **Section 29**, Buyer’s indemnity obligations under this Section shall survive the Closing or other termination of this Agreement.

(d) Buyer shall maintain, at its sole cost and expense, either Comprehensive General Liability Insurance (with Broad Form Endorsement) or Commercial General Liability Insurance covering all activities of Buyer, its employees and agents upon the Property (and any areas adjacent thereto). Such insurance shall be in a form, content and amounts and issued by an insurer reasonably acceptable to Seller. Buyer shall deliver a certificate evidencing such insurance to Seller prior to any entry upon the Property by Buyer. Such certificate shall evidence that the policy has been endorsed to specifically insure Seller’s liability under the provisions of this **Section 4** to name Seller as an additional insured and to prohibit any cancellation or amendment thereof without at least 30 days’ (10 days’ in the case of non-payment) prior written notice to Seller. In the event that such policy is canceled, Seller shall have the right to obtain a replacement policy and to add the cost of the premium to the Purchase Price.

(e) At any time during the Feasibility Period Buyer shall have the right in its sole and absolute discretion, for any reason and no reason whatsoever, to terminate this Agreement by providing written notice thereof to Seller on or before the expiration of the Feasibility Period. Upon any such termination, Buyer shall (i) return all Due Diligence Materials provided to Buyer by Seller relating to the Property, and (ii) deliver to Seller the originals and all copies of any reports and tests regarding the Property prepared on Buyer’s behalf, except to the extent such materials constitute Buyer’s trade secrets or proprietary information. Further, upon such a termination, Escrow Holder shall return the Deposit to Buyer, less any cancellation or other charges imposed by Escrow Holder, and Buyer shall have no other remedy against Seller. If Buyer does not timely provide written notice of termination to Seller in accordance with this Section, then Buyer shall be deemed to have approved all aspects of the condition of all of the Property, and the Deposit shall be non-refundable except in the event of a default by Seller. Notwithstanding anything to the contrary herein, Buyer shall have the right, in Buyer’s sole discretion and at any time prior to the Closing Date, to terminate this Agreement as to any or all of the Groups by giving notice to Seller describing the Group or Groups to be removed from the Agreement; provided, that Buyer shall have no right to terminate this Agreement as to any individual Parcel or Parcels within any Group. Following delivery of a notice of termination, this Agreement shall continue in full force and effect as to the remaining Group(s), if any, and this Agreement shall terminate, with the parties having no further obligations hereunder, as to the Group or Groups that were described in such notice. For a notice of termination delivered after the Feasibility Period, Buyer shall comply with all of the obligations set forth in this **Section 4(e)**

but Seller shall have no obligation to return the Deposit or any Extension Payments previously made hereunder except in the event of Seller's default under this Agreement. Upon termination as to any portion of the Property, Buyer shall comply with the provisions of **Section 36** hereof.

(f) Buyer shall have the right, with the concurrence of Seller, to add and/or substitute other parcels of real property for any Parcels included within the Property. Any agreement to add and/or substitute other parcels of real property for any of the Parcels shall be documented in an amendment to this Agreement signed by Seller and Buyer.

(g) Prior to the Closing, Buyer shall have (i) physically inspected the Property to Buyer's satisfaction and (ii) investigated to Buyer's satisfaction and have knowledge of applicable operative or proposed governmental laws, regulations, ordinances and decisions to which the Property is or may be or become subject. The Closing shall be deemed Buyer's acknowledgment that Buyer and/or Buyer's representatives have conducted such inspection and investigation to Buyer's satisfaction.

5. Seller Covenants; Possession and Risk of Loss.

(a) Covenants

(i) At the time of the Closing, Seller shall cause to be paid in full all obligations under any outstanding written or oral contracts made by Seller for any improvements to the Property, and Seller shall cause to be discharged all mechanics' and materialmen's liens arising from any labor or materials furnished to the Property prior to the time of the Closing.

(ii) Subject to **Section 16(d)**, between the Effective Date and the Closing, to the extent Seller has any knowledge thereof, Seller shall promptly notify Buyer of the following items relating to the Property: (A) any condemnation, environmental, zoning or other land-use regulation proceedings, (B) any notices of violations of any laws, and (C) any litigation relating to the Property or that arises out of the ownership of the Property or affects Seller's ability to perform under this Agreement.

(iii) Seller shall maintain the Property in the same condition existing as of the Effective Date, reasonable wear and tear excepted. Seller agrees that upon delivery of the Grant Deed (defined below), the Property shall be in the same condition as the Property is in on the Effective Date of this Agreement, reasonable wear and tear excepted.

(iv) Seller shall remove the Property from the market, if listed, and shall not market the Property for sale during the term of this Agreement. Seller shall not enter into any new lease for the Property with a term extending beyond the Closing Date without Buyer's prior written consent.

(v) Buyer shall have the right, at Buyer's expense, to apply for permits and land use entitlement approvals affecting the Property, as well as property tax exemptions for the Property and certain equipment to be located thereon after Closing. At no expense to Seller, other than nominal, incidental costs, Seller shall cooperate with Buyer in Buyer's efforts to obtain such permits, approvals and exemptions by providing all necessary authorizations, executing such documents, and taking such actions as are reasonably necessary to obtain such

permits, approvals and exemptions; provided, that no permits, approvals or exemptions shall be binding on Seller or the Property prior to the Closing.

(vi) Through the Closing Date, at least once per calendar year Seller shall disk any portions of the Property that are not planted with permanent crops or encumbered by irrigation equipment, whether leased to third parties or not.

(b) Possession and Risk of Loss

(i) In the event of any damage to the Property before Closing, such damage may be repaired by and at the cost of Seller prior to the Closing, and if not so repaired, Buyer may elect to accept the Property in its damaged condition, and Buyer shall be entitled to a credit against the Purchase Price in the amount of any insurance proceeds collected by Seller as a result of any such damage to the Property, less any sums reasonably expended by Seller toward the restoration or repair of the Property, and, if all of the proceeds have not been collected as of the Closing, then such proceeds shall be assigned to Buyer, and Buyer shall also be entitled to a credit against the Purchase Price in the amount of any deductible or uninsured loss. If Seller fails to maintain adequate insurance or in the event of an uninsured loss, Buyer shall be entitled to a credit against the Purchase Price in the amount of the uninsured loss. Alternatively, Purchaser shall have all remedies available to it under **Section 15(b)**; provided, however, Seller shall not be entitled to receipt of any notice of default or opportunity to cure with respect to the failure to maintain adequate insurance or the occurrence of an uninsured loss.

(ii) If, prior to the Closing, any portion of the Property is taken by any entity by condemnation or with the power of eminent domain, or if the access thereto is reduced or restricted thereby (or is the subject of a pending taking which has not yet been consummated), Seller shall immediately notify Buyer of such fact. In such event, Buyer shall have the right, in Buyer's sole and absolute discretion, to terminate this Agreement upon written notice to Seller not later than 30 days after receipt of Seller's notice thereof. If this Agreement is so terminated, all documents and funds, if any, shall be returned by Escrow Holder to each party who so deposited the same; provided, that, the Deposit and any Extension Payments previously paid shall be retained by Seller and Buyer shall have the right to seek an award from the condemning authority to compensate Buyer for its lost interests in the Property and lost opportunities with respect thereto pursuant to this Agreement. Thereafter, neither party shall have any further rights or obligations hereunder, except for payment of escrow cancellation fees, which shall be borne equally by Seller and Buyer. Alternatively, Buyer may proceed to consummate the transaction provided for herein at Buyer's sole and absolute election, in which event any and all awards made or to be made in connection with such condemnation or eminent domain, shall be divided between Seller and Buyer in the proportions specified in any award or agreement or, if not so specified, in proportion to the fair value of Seller's and Buyer's respective interests in the Property, and the parties shall proceed to the Closing pursuant to the terms hereof. If all of the award has not been collected as of the Closing, then such award shall be assigned to Buyer.

(iii) Buyer shall be entitled to possession of the Property free and clear of all occupancies and shall assume all risk of loss with respect to the Property at 5:00 p.m. Pacific Standard Time on the Closing Date.

6. Condition of Title to Property.

(a) Seller shall convey fee title to the Property to Buyer or Buyer's nominee(s) subject only to (i) non-delinquent taxes and assessments; (ii) those liens created by Buyer; and (iii) those encumbrances, contracts, agreements, rights, easements, rights of way, and mineral leases, rights and reservations set forth in a preliminary report of title to the Property to be prepared by Escrow Holder (the "Title Report") promptly after the opening of the Escrow that have not been specifically disapproved by Buyer in writing pursuant to the process described below (collectively, the "Permitted Exceptions"). Upon receipt of the Title Report, Buyer shall have 75 days within which to notify Escrow Holder in writing of any exceptions to title shown therein, or of which Buyer is otherwise aware, that Buyer in its sole and absolute discretion disapproves (the "Objectionable Exceptions").

(b) If Buyer notifies Seller of one or more Objectionable Exceptions, Seller shall have 30 days from receipt of such written notice to (i) commit to remove the Objectionable Exception(s) and proceed to the Closing, or (ii) refuse to remove the Objectionable Exception(s), in which case Buyer, within 10 days after such refusal, may, in its sole and absolute discretion, elect to either waive its objection and proceed to the Closing, or to terminate this Agreement, whereupon Escrow Holder shall return the Deposit to Buyer less any cancellation or other charges imposed by Escrow Holder, and neither party shall have any further obligations under this Agreement except as expressly provided herein.

(c) Notwithstanding the foregoing, Seller shall have no obligation to remove (i) any objectionable exception pertaining to the use of irrigation water on the Property or the agricultural use of the Property, including, but not limited to, prohibitions or restrictions imposed for the benefit of Seller or the United States, or (ii) exceptions (if any) pertaining to any "Williamson Act" contract.

(d) Notwithstanding anything to the contrary herein, if the Survey is not available for Buyer's review prior to the end of the Feasibility Period, Buyer shall retain the right to obtain and review the Survey at any time during the term of this Agreement and to notify Seller of additional Objectionable Exceptions based on Buyer's review thereof (the "Survey Title Objections"). Such Survey Title Objections shall be delivered to Seller, if at all, no later than the 60<sup>th</sup> day following Buyer's receipt of the Survey. If Buyer notifies Seller of one or more Survey Title Objections, Seller shall have 10 days from receipt of such written notice ("Seller's Survey Response Period") to (i) commit to remove the Survey Title Objections in manner reasonably acceptable to Buyer as of the Closing, or (ii) refuse to remove the Survey Title Objections. Seller's failure to notify Buyer within Seller's Survey Response Period shall be deemed an election by Seller not to remove such Survey Title Objections. If Seller notifies or is deemed to have notified Buyer that Seller will not remove any or all of the Survey Title Objections, Buyer, in its sole and absolute discretion, shall have until the 10<sup>th</sup> business day following the end of Seller's Survey Response Period to elect either to (A) terminate this Agreement, but Seller shall have no obligation to refund the Deposit or any Extension Payments previously paid by Buyer unless Seller has defaulted in its obligations under this Agreement which has resulted in the creation of one or more Survey Title Objections, or (B) waive such Survey Title Objections and continue this Agreement.

(e) Buyer may additionally, at any time prior to the Closing, notify Seller in writing (the "Gap Notice") of Buyer's objection to any additional Objectionable Exceptions or Survey Title Objections not created by Buyer or with Buyer's prior written consent (A) raised by Escrow Holder or otherwise disclosed to Buyer between the expiration of the Feasibility Period and the Closing and (B) not disclosed by Escrow Holder or otherwise known to Buyer prior to the expiration of the Feasibility Period. If Buyer sends a Gap Notice to Seller, Seller shall have 5 business days after receipt of the Gap Notice to notify Buyer in writing that Seller (1) will cause or (2) elects not to cause any or all of the Objectionable Exceptions or Survey Title Objections set forth in the Gap Notice to be removed prior to Closing. Seller's failure to respond in writing to Buyer's Gap Notice within such 5 business day period shall be deemed Seller's election not to cause the removal of the Objectionable Exceptions or Survey Title Objections set forth in the Gap Notice. If Seller notifies or is deemed to have notified Buyer that it elects not to cause the removal of the Objectionable Exceptions or Survey Title Objections set forth in the Gap Notice, Buyer shall have 5 business days after the expiration of Seller's 5 business day period to either:

(i) terminate this Agreement, and if such termination is for Seller's election not cause removal of Objectionable Exceptions, the Deposit and any Extension Payments previously paid by Buyer shall be immediately refunded to Buyer; or

(ii) waive the Objectionable Exceptions or Survey Title Objections set forth in Buyer's Gap Notice and proceed to the Closing.

The Closing Date shall be extended as necessary to accommodate the time periods set forth in this Section.

7. Title Insurance. At the Closing and as a condition to Buyer's obligation to purchase and Seller's obligation to sell the Property, Escrow Holder shall commit to issue its CLTA Owner's Policy of Title Insurance showing title to the Property vested in Buyer or Buyer's nominee subject only to the Permitted Exceptions as determined in accordance with **Section 6** (the "CLTA Policy") and containing such endorsements as Buyer shall reasonably require. The premium for the CLTA Policy shall be paid by Seller. The CLTA Policy shall insure Buyer or Buyer's nominee with liability in the amount of the Purchase Price. If Buyer chooses to purchase any title policy in addition to the CLTA Policy, Buyer shall pay all costs associated with any such additional title policy.

8. Closing.

(a) Unless otherwise extended by the parties in writing, and subject to **Section 8(b)** of this Agreement, the transactions contemplated by this Agreement and all associated actions shall be completed in one or more closings (each, a "Closing") on such date as all conditions to each Closing have been satisfied or waived (each, a "Closing Date"). The Closing Date shall occur no later than the date that is 4 months after the Effective Date of this Agreement. Buyer may elect to have a Closing as to any Group or Groups within the Property at any time prior to the Closing Date, by delivering notice specifying which Group or Groups shall be subject to such Closing ("Buyer's Closing Notice"). Within 5 business days thereafter, Seller and Buyer shall agree upon a date for such Closing with respect to the Group or Groups contained in Buyer's Closing Notice, which shall be prior to the Closing Date except as

otherwise provided herein, and shall allow Seller sufficient time to provide the tenant under any lease affecting any part of the Group or Groups with 45 days' notice of termination of such lease.

(b) Buyer may extend the Closing Date for up to eleven (11) successive "Extension Periods" for the terms indicated below, by paying the "Extension Payments" described below for each Extension Period. If Buyer has exercised its right to close hereunder with respect to a Group or Groups within the Property, this right to extend the Closing Date and the term of this Agreement shall continue as to the remaining Group or Groups within the Property.

Extension Period	Months in Extension Period	Required Extension Payment
1	4	\$3,000
2	4	\$30,000
3	4	\$30,000
4	4	\$30,000
5	4	\$30,000
6	4	\$30,000
7	3	\$100,000
8	3	\$200,000
9	3	\$300,000
10	3	\$400,000
11	2	\$400,000

**\$1,553,000**

To extend the Closing Date for a given Extension Period, Buyer shall give written notice of such extension to Seller and the Title Company, and deposit the corresponding Extension Payment with the Title Company. Each Extension Payment shall be immediately released by Escrow Holder to Seller without further instructions of any kind from the parties. Buyer's initial notice to extend the Closing Date must be given prior to the original Closing Date specified in **Section 8(a)**. Any notice of further extensions must be given prior to the end of the Extension Period then in effect. Each Extension Payment shall be credited against the Purchase Price payable at the Closing next succeeding the making of such Extension Payment, but shall not be refundable to Buyer except as provided in this Agreement.

(c) Both parties shall diligently endeavor to satisfy all conditions precedent to each Closing as soon as reasonably practicable. If the Escrow is not in a condition to close by the applicable Closing Date, Escrow Holder shall cancel the Escrow upon receipt of written notice from either party of such cancellation; provided, however, that if the Escrow is not in a condition to close by the Closing Date due to the failure of only one party to perform, and the other party has fully performed all of the obligations required of it in order to close the Escrow,

only the performing party shall be entitled to provide Escrow Holder with written notice of cancellation. In the absence of any written notice of cancellation, Escrow Holder shall proceed to close the Escrow as soon as possible. Notwithstanding anything to the contrary herein, the parties specifically acknowledge and agree that so long as Buyer's Closing Notice is received prior to the Closing Date, the actual date of Closing may occur after the Closing Date but within 90 days thereafter and no extension of the Closing Date or making of an Extension Payment shall be required for Buyer to obtain such additional 90-day period within which to have the Closing.

9. Conditions Precedent to Buyer's Obligation to Perform. Buyer's obligation to close the Escrow is conditioned on satisfaction of each of the following conditions precedent:

(a) Seller shall have timely performed each of the acts to be performed by it under this Agreement.

(b) All of Seller's representations and warranties contained herein shall be true and correct on the applicable Closing Date.

(c) Escrow Holder shall be committed to issue the CLTA Policy or, at Buyer's election, an ALTA extended coverage owner's policy of title insurance covering the Group or Groups within the Property, in the full amount of the Purchase Price payable at the applicable Closing Date and containing such endorsements as Buyer may reasonably request, either of which shall be in a form satisfactory to Buyer.

(d) Seller shall not have failed to correct any Objectionable Exception noticed by Buyer within the time periods set forth in **Section 6**.

(e) There shall have occurred no material loss, damage or destruction to the Property or any portion thereof that was not caused by Buyer, its agents or employees.

(f) All leases and contracts affecting the applicable Group or Groups within the Property shall be terminated effective on or before the applicable Closing.

(g) Buyer shall not have timely exercised any right set forth in this Agreement to cancel the Escrow or terminate this Agreement.

10. Deposits into Escrow. At or prior to each Closing:

(a) Seller shall deposit the following documents (collectively, "Seller's Documents"): (i) an executed and acknowledged original grant deed conveying good and marketable title to so much of the Property as can be transferred via grant deed to Buyer in the form attached to this Agreement as Exhibit B (the "Grant Deed"); (ii) an executed original of a bill of sale or other proper instrument of conveyance conveying good and marketable title to any portion of the Property that cannot be transferred by grant deed to Seller (the "Bill of Sale"); (iii) Seller's affidavit of non-foreign status as contemplated by Section 1445 of the Internal Revenue Code of 1986, as amended (the "FIRPTA Affidavit"); (iv) either California Franchise Tax Board Form 593-C or 593-W regarding the withholding of California taxes on the sale of California real estate (the "Withholding Affidavit"); and (v) an executed and acknowledged counterpart original of the Groundwater Easement.



(b) Buyer shall deposit all funds when and as required, including without limitation the Purchase Price and all amounts necessary to pay Buyer's share of the closing costs, together with (i) a written release in the form of Exhibit E attached hereto as to the portion of the Property that is the subject of the Closing (a "Release"); (ii) an executed and acknowledged counterpart original of the Groundwater Easement; and (iii) the required preliminary change of ownership report.

11. Prorations. Escrow Holder shall prorate the following items, as of each Closing, using a 365 day year: all real and personal property taxes relating to the Property using the latest tax bills. Buyer shall be responsible for any supplemental assessments or reassessments attributable to any period after the Closing. Buyer shall pay any supplemental taxes assessed pursuant to Chapter 3.5 (Section 75) of the California Revenue and Taxation Code resulting from the sale of the Property to Buyer.

12. Costs and Expenses. Seller shall pay all documentary transfer taxes, one-half of all fees charged by Escrow Holder in connection with the Escrow and any other usual seller's costs customary in Fresno County. Buyer shall pay all costs associated with any premium insurance policy additional to the CLTA Policy, one-half of all fees charged by Escrow Holder in connection with the Escrow, and any other buyer's costs customary in Fresno County. Escrow Holder may reimburse itself for Seller's share of cost and expenses out of the cash proceeds to be dispersed to Seller. The parties believe no sales or use tax will be due or payable in connection with the transfer of the Property to Buyer hereunder. In the event, however, that the taxing authorities claim that such taxes are due, either party may, at its sole cost and expense, and in its sole and absolute discretion, oppose by protest or other means, the imposition of such tax to the extent of such party's liability hereunder. In the ultimate event that such tax is found to be due and payable, Buyer shall pay all such taxes.

13. Procedure for Closing. Escrow Holder shall close the Escrow at each Closing Date by doing the following:

(a) Credit the Deposit and each Extension Payment previously made by Buyer hereunder, if any, to the Purchase Price payable by Buyer at the first Closing hereunder with any remaining Balance of such amounts, as the same may increase if additional Extension Payments are made by Buyer to successive Closings hereunder;

(b) Pay from funds otherwise distributable to Seller all claims, demands and liens necessary to place title to the Property in the condition set forth in **Section 6**;

(c) Pay Seller's share of the closing costs from funds otherwise distributable to Seller;

(d) Pay from funds deposited by Buyer, Buyer's share of closing costs;

(e) Prorate real and personal property taxes as set forth in **Section 11** above;

(f) Record Seller's Grant Deed in the Official Records of Fresno County, and direct the County Recorder to affix the transfer tax after recording, record the Groundwater

Easement, return the recorded Grant Deed and Groundwater Easement to Buyer with conformed copies to Seller, and file Buyer's preliminary change of ownership report;

(g) Deliver the Bill of Sale, FIRPTA Affidavit and Withholding Affidavit to Buyer;

(h) Deliver the Release to Seller; and

(i) Deliver those funds held in Escrow due to Seller, less payments authorized hereunder, as instructed by Seller prior to the Closing, and return any excess funds deposited in Escrow by Buyer to Buyer, as instructed by Buyer prior to the Closing.

14. Failure to Close. Except as otherwise provided in this Agreement, if the Escrow shall fail to close as a result of Buyer's uncured breach of any of its obligations hereunder, or upon Buyer's election to terminate in accordance with the provisions of this Agreement, then upon demand of Seller, Escrow Holder shall terminate the Escrow, immediately deliver Seller's Documents to Seller, deliver Buyer's preliminary change of ownership report and other deposits to Buyer, and charge Buyer for any cancellation charges. If the Escrow shall fail to close as a result of Seller's uncured breach of any of its obligations hereunder, then upon demand of Buyer, (i) Escrow Holder shall terminate the Escrow, deliver Seller's Documents to Seller, deliver Buyer's preliminary change of ownership report and other deposits to Buyer, and charge Seller for any cancellation charges; and (ii) Seller shall immediately return to Buyer the Deposit and any Extension Payments theretofore distributed to Seller. If the Escrow fails to close through no fault of either Buyer or Seller, upon the demand of either party, Escrow Holder shall return Buyer's preliminary change of ownership report and Buyer's other deposits to Buyer, return Seller's Documents to Seller and cancel the Escrow, with all cancellation charges to be borne by Buyer.

15. Remedies.

(a) In the event the sale of the Property is not consummated because of the failure of any condition that does not constitute a default of Seller hereunder or solely because of a default under this Agreement on the part of Buyer, and Buyer has failed to cure such default within 10 business days after Buyer's receipt of Seller's notice of Buyer's default, Seller shall retain the Deposit and any Extension Payments previously paid by Buyer as its sole and exclusive remedy, and Seller and Buyer shall be excused from further performance hereunder.

(b) In the event the sale of the Property is not consummated solely because of a default under this Agreement on the part of Seller, and Seller has failed to cure such default within 10 business days after Seller's receipt of Buyer's notice of Seller's default, Buyer may either (i) terminate this Agreement by delivery of written notice of termination to Seller, whereupon Seller shall immediately return to Buyer the Deposit and any Extension Payments previously paid by Buyer and Buyer shall have the right to all available remedies with respect to Buyer's other damages; or (ii) continue this Agreement and pursue all other appropriate remedies, which shall include, without limitation, specific performance of Seller's obligations under this Agreement.

(c) Liquidated Damages. IF BUYER FAILS TO COMPLETE THE TRANSACTIONS CONTEMPLATED IN THIS AGREEMENT BY REASON OF ANY DEFAULT OF BUYER AND SELLER IS READY, WILLING AND ABLE TO CONSUMMATE THE SALE CONTEMPLATED HEREIN, AND SELLER IS NOT IN DEFAULT UNDER THIS AGREEMENT, SELLER SHALL BE RELEASED FROM SELLER'S OBLIGATIONS HEREUNDER. BY INITIALING THIS **SECTION 15(c)** BUYER AND SELLER AGREE THAT IN THE EVENT OF DEFAULT BY BUYER, (i) IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES; (ii) AN AMOUNT EQUAL TO THE DEPOSIT AND ANY EXTENSION PAYMENTS THERETOFORE DISTRIBUTED TO SELLER SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO SELLER; (iii) THE PAYMENT OF THE LIQUIDATED DAMAGES TO SELLER SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF SELLER; (iv) SELLER MAY RETAIN THAT PAYMENT ON ACCOUNT OF PURCHASE PRICE FOR THE PROPERTY AS LIQUIDATED DAMAGES; AND (v) PAYMENT OF THOSE SUMS TO SELLER AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676, AND 1677 OF THE CALIFORNIA CIVIL CODE.

\_\_\_\_\_/\_\_\_\_\_

16. Seller Disclaimer Regarding Physical Condition of Property and Applicable Laws and Regulations.

(a) Seller makes no representation or warranty whatsoever as to any aspect of the Property, including without limitation: (i) the physical condition of the Property; (ii) soils, seismic, hydrological, geological and topographical conditions and configurations; (iii) water supplies available to the Property; (iv) the value or profitability of the Property or its fitness for Buyer's intended use; (v) the presence or absence of any endangered plant, animal and insect species; or (vi) any utilities available to the Property. Without limiting the foregoing, Seller has not made and hereby disclaims any and all representations and warranties as to the quality, quantity, adequacy, availability, deliverability, reliability, transferability or cost of surface or well water or water rights for the Property. Buyer further understands that the Property is subject to Federal Reclamation law if used for agricultural purposes, and that the cost and availability of water can be affected by the manner in which the Property is owned and operated.

(b) Buyer acknowledges and agrees that (i) Buyer shall make its own independent examination and evaluation of the property being purchased, and shall not rely upon Seller, its agents or representatives, or any other persons for any data with respect to the Property; (ii) Buyer is aware that the Property has been used for farming for many years, and pursuant to California Health and Safety Code Section 25359.7 Seller hereby discloses to Buyer that one or more releases of hazardous substances may have come to be located on, under, about or in the vicinity of the Property; (iii) various petroleum products, fuel, gasoline and chemicals, including fertilizers, herbicides and pesticides, customarily used in farming, some of which may, as of the date hereof, be considered to be hazardous or toxic, may have been used, stored, mixed

and applied to the Property in the course of the farming activities conducted thereon or on adjacent property; (iv) Buyer shall acquire the Property on the basis of its own investigation of the physical condition of the Property, including subsurface conditions, improvements, water supply, and irrigation systems; and (v) Buyer shall acquire the Property in an “AS IS” condition, and assumes the risks that adverse physical conditions may not have been revealed by its investigation.

(c) Seller makes no representation or warranty whatsoever as to operative or proposed governmental laws or regulations, including, but not limited to, zoning, environmental, and land and water use laws and regulations, to which the Property may be subject. Buyer acknowledges and agrees that it shall acquire the Property on the basis of its own review and investigation of the applicability and effect of such laws and regulations, and that Buyer assumes the risks that adverse matters may not have been revealed by its investigation.

(d) Seller discloses that it is party to various lawsuits and is subject to various regulatory proceedings that affect its ability to deliver surface water supplies to water users within its service area, which lawsuits and regulatory proceedings will be described with commercially reasonable specificity in a listing to be delivered to Buyer within 20 days of the Effective Date. However, Seller has no reason to believe that these lawsuits and proceedings will impact Buyer’s proposed use of the Property for solar power generation purposes.

17. Indemnity.

(a) By Buyer. Buyer shall indemnify, defend and hold harmless Seller and its successors, directors, officers, members, partners, shareholders, employees, representatives, agents, and volunteers (collectively, “Seller Parties”) from any and all Claims arising out of or relating in any way to the Property, any Hazardous Materials Condition, or any remediation relating thereto, except to the extent such Claims were created or caused by the Seller Parties or Seller’s tenants and anyone else claiming under, by or through Seller or arise from the actions of the Seller Parties or Seller’s tenants and anyone else claiming under, by or through Seller. For the purpose of this Agreement, a “Hazardous Materials Condition” is defined as the existence on, under, or in the vicinity of the Property of any Hazardous Material (as defined below) that would require investigation, assessment, remediation and/or removal under applicable federal, state or local law.

(b) By Seller. Seller shall indemnify, defend and hold harmless Buyer and its successors, directors, officers, members, partners, shareholders, employees, representatives and agents (collectively, “Buyer Parties”) from any and all Claims arising out of or relating in any way to the Property, any Hazardous Materials Condition, or any remediation relating thereto, except to the extent such Claims were created or caused by the Buyer Parties or arise from the actions of Buyer or the Buyer Parties.

(c) Application of Indemnities; Survival. The indemnities provided in this **Section 17** shall be in addition to and not in derogation or substitution of any releases or indemnities provided elsewhere in the Agreement. The provisions of **Section 17(a)** shall survive the termination or expiration of the Agreement and the Closing, as the case may be. The

provisions of **Section 17(b)** shall survive the termination or expiration of the Agreement but shall not survive the Closing.

18. Representations, Warranties and Covenants.

(a) Seller hereby represents and warrants to Buyer as follows:

(i) Seller has not, and as of the Closing, Seller shall not have (A) made a general assignment for the benefit of creditors; (B) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors; (C) suffered the appointment of a receiver to take possession of all, or substantially all, of Seller's assets, which remains pending as of such time; (D) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, which remains pending as of such time; (E) admitted in writing its inability to pay its debts as they come due; or (F) made an offer of settlement, extension or composition to its creditors generally.

(ii) Seller is not, and as of the Closing shall not be, a "foreign person" as defined in Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code") and any related regulations.

(iii) This Agreement (A) has been duly authorized, executed and delivered by Seller, and (B) does not, and as of the Closing shall not, violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

(iv) To Seller's Knowledge (defined below), there is no litigation pending or threatened with respect to the Property or the transactions contemplated hereby or that would impair Seller's ability to perform under this Agreement.

(v) Subject to **Section 16(d)**, to Seller's Knowledge, there are no violations of any applicable environmental, zoning or land use law, or any other applicable local, state or federal law or regulation relating specifically to the Property, including, without limitation, the Americans with Disabilities Act of 1990 and Seller is not aware of any proposed or pending changes in zoning or proposed relocation, reconfiguration or other change with respect to any street or road affecting the Property, if any.

(vi) To Seller's Knowledge, there are no condemnation proceedings pending or threatened that would result in the taking of any portion of the Property. Seller has not received any written notice of any special assessment proceedings affecting the Property that are not disclosed on the Preliminary Report.

(vii) Seller is the sole owner of the Property, and Seller holds good and marketable title to the Property according to laws of the State where the Property is located.

(viii) Seller has not granted any option or right of first refusal or first opportunity to any party to acquire any fee or ground leasehold interest in any portion of the Property.

(ix) To Seller's Knowledge, the Due Diligence Materials delivered to Buyer pursuant to this Agreement are, or when delivered will be, all of the relevant documents, materials, reports and other items pertaining to the condition and operation of the Property, and, to the extent prepared by or for Seller's benefit, will be true and correct copies.

(x) Except as described in **Subsections 16(b)(ii) and (iii)**, Seller (and to Seller's Knowledge, its tenants at the Property) have not used Hazardous Materials on the Property for purposes other than (A) as necessary to operate and maintain the Property and (B) in compliance with all environmental laws and restrictions. For the purposes hereof, "Hazardous Materials" shall mean (1) any petroleum or petroleum distillates and products, flammable explosives, radioactive materials, asbestos in any form, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls in any concentrations, and radon gas; (2) any chemicals, materials, substances or wastes which are now or hereafter become defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," or words of similar import, under any environmental laws and restrictions; and (3) any other chemical, material, substance, or waste, exposure to which is now or hereafter prohibited, limited or regulated by any governmental or regulatory authority.

(b) Seller represents and warrants to Buyer that each of the persons executing this Agreement on behalf of Seller is duly authorized to do so, and that Seller has full right and authority to enter into this Agreement and consummate the transactions contemplated herein.

All references to "Seller's Knowledge" shall mean the actual, conscious knowledge of Tom Glover, without independent duty of investigation. All representations and warranties made by Seller herein or made in writing pursuant to this Agreement shall be deemed to be material and shall survive the execution and delivery of this Agreement and the Closing for a period of twelve (12) months.

(c) Seller understands that Buyer intends to acquire the Property for the purpose of constructing solar power generation and related facilities, which will require various permits and governmental consents. Seller consents to Buyer pursuing such permits and consents prior to the Closing, and shall reasonably cooperate with Buyer in connection therewith. However, Seller shall not be obligated to incur any material unreimbursed expenses in connection therewith. In no event shall Seller be required to serve as a lead agency for any environmental analysis required in connection with such permits or consents, including without limitation any environmental analysis under the California Environmental Quality Act. Further, Seller shall not be obligated to allow, nor shall Buyer impose without Seller's prior written consent, any enforceable restrictions on the Property that cannot be immediately terminated without cost to Seller in the event the Closing does not occur for any reason.

(d) Buyer represents and warrants to Seller as follows:

(i) Buyer is a duly organized and validly existing limited liability company in good standing under the laws of the State of Delaware.

(ii) Buyer has not, and as of the Closing, Buyer shall not have (A) made a general assignment for the benefit of creditors; (B) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Buyer's creditors; (C) suffered the appointment of a receiver to take possession of all, or substantially all, of Buyer's assets, which remains pending as of such time; (D) suffered the attachment or other judicial seizure of all, or substantially all, of Buyer's assets, which remains pending as of such time; (E) admitted in writing its inability to pay its debts as they come due; or (F) made an offer of settlement, extension or composition to its creditors generally.

(iii) Each of the persons executing this Agreement on behalf of Buyer is duly authorized to do so. Buyer has full right and authority to enter into this Agreement and to consummate the transactions contemplated herein. This Agreement constitutes the valid and legally binding obligation of Buyer and is enforceable against Buyer in accordance with its terms. The execution and delivery of, and the performance by Buyer of its obligations under, this Agreement do not and will not contravene or constitute a default under the documents creating, governing or otherwise relating to the existence of Buyer, or any agreement, judgment, injunction, order, decree or other instrument binding upon Buyer.

(iv) There are no actions, suits, claims or other proceedings pending or, to the best of Buyer's Knowledge (defined below), contemplated or threatened against Buyer that could affect Buyer's ability to perform its obligations under this Agreement.

(v) Buyer has sufficient funds available to consummate Closing.

All references to "Buyer's Knowledge" shall mean the actual, conscious knowledge of Seth Israel, without independent duty of investigation. All representations and warranties made by Buyer herein or made in writing pursuant to this Agreement shall be deemed to be material and shall survive the execution and delivery of this Agreement and the Closing for a period of twelve (12) months.

19. Broker's Commission. Each party warrants and represents to the other that no brokers have been retained or consulted in connection with this transaction. Each party agrees to defend, indemnify, and hold harmless the other party from any claims, expenses, costs, or liabilities arising in connection with a breach of that party's representations, warranties, or covenants under this Agreement.

20. Time and Computation of Time. Time is of the essence of this Agreement and each and all of its provisions. The parties agree that the time for performance of any action permitted or required under this Agreement shall be computed as if such action were "an act provided by law" within the meaning of California Civil Code Section 10, which provides: "The time in which any act provided by law to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded."

21. Effect of Headings. The subject headings of the paragraphs and subparagraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

22. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the parties hereto.

23. Counterparts and Facsimile Signatures. This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument. Facsimile and electronic signature pages shall constitute originals and shall be binding.

24. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, assigns, and successors of the parties hereto.

25. Professionals' Fees. Should any action or proceeding be commenced between the parties hereto concerning this Agreement, or the rights and duties of any party in relation thereto, the party prevailing in such action or proceeding shall be entitled, in addition to such other relief as may be granted, to recover from the losing party a reasonable sum for its attorneys', paralegals', accountants', and other professional fees and costs incurred in connection with such action or proceeding.

26. Governing Law and Venue. This Agreement shall be governed by the laws of the State of California. Venue for any action to enforce or interpret this Agreement shall be proper only in Fresno County, California.

27. Parties in Interest. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies on any persons other than the parties hereto and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over and against any party to this Agreement.

28. Notices. All notices and other communications required under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of service, if served personally on the person to whom notice is to be given; (b) on the date of service if sent by telecopier with confirmation of successful transmission, provided the original is concurrently sent by first class mail, and provided that notices received by telecopier after 5:00 p.m. shall be deemed given on the next business day; (c) on the next business day after deposit with a recognized overnight delivery service; or (d) on the third day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage-prepaid, and properly addressed as follows:

To Seller:	Westlands Water District
	3130 North Fresno Street
	Fresno, CA 93703-6056
	Attn: Mr. Tom Glover
	Fax No.: (559) 241-6277



With a copy (which shall not constitute notice) to:

Sawyers & Holland, LLP  
652 West Cromwell, Suite 101  
Fresno, CA 93711  
Attn: David E. Holland, Esq.  
Fax No.: (559) 438-1781

To Buyer:

SiteCo, LLC  
300 California Street, 8<sup>th</sup> Floor  
San Francisco, CA 94104  
Attn: Judith Hall – General Counsel  
Fax No.: (415) 675-1501

With a copy (which shall not constitute notice) to:

SiteCo, LLC  
300 California Street, 8<sup>th</sup> Floor  
San Francisco, CA 94104  
Attn: Seth Israel – Director, Site Acquisitions  
Fax No.: (415) 675-1501

A party may change its address for notices by providing notice to the other parties as provided above.

29. Survival. All representations, warranties and covenants set forth herein shall survive the Closing for a period of one (1) year, and Seller and Buyer agree to indemnify, defend and hold the other harmless from any claim, demand, liability, loss or cost (including without limitation reasonable professionals' fees and costs) which the other may sustain arising out of any breach of or inaccuracy in the respective representations, warranties and covenants of Seller and Buyer set forth herein.

30. Severability. If any provision of this Agreement is declared invalid, illegal or unenforceable, such provision shall be deemed to be served or deleted from this Agreement and the balance of this Agreement shall remain in full force and effect notwithstanding such invalidity, illegality or unenforceability.

31. Cumulative Rights; Waiver. No failure by either party to exercise, and no delay in exercising any rights, shall be construed or deemed to be a waiver thereof, nor shall any single or partial exercise by either party preclude any other or future exercise thereof or the exercise of any other right. Any waiver of any provision or of any breach of any provision of this Agreement must be in writing, and any waiver by either party of any breach of any provision of this Agreement shall not operate as or be construed to be a waiver of any other breach of that provision or of any breach of any other provision of this Agreement.

32. Further Action. The parties agree to perform all further acts, and to execute, acknowledge, and deliver any documents that may be reasonably necessary, appropriate or desirable to carry out the purposes of this Agreement. As provided in **Section 29**, the obligations

of the parties under this Section shall survive the Closing and the delivery and recordation of the Grant Deed.

33. Tax Deferred Exchange. If Buyer wishes to enter into a tax-deferred exchange for the Property, Seller agrees to cooperate reasonably with Buyer in connection with such exchange, including, without limitation, the execution of such documents as may reasonably be necessary to effectuate the same. Such obligation shall, however, be subject to the following: (a) Seller shall not be obligated to change the Closing, (b) all additional costs in connection with the exchange shall be borne by Buyer, (c) Seller shall not be obligated to take title to any property in connection with any such exchange or to execute any note, contract or other document providing for any liability to Seller, and (d) Buyer shall indemnify and hold Seller harmless from and against any claims, demands, liabilities, costs, expenses, damages and losses (including, without limitation, attorney's fees and costs) in any way arising out of or in connection with or resulting from the indemnified party's participation in any such exchange.

34. Ambiguities. This Agreement shall be interpreted as if it had been jointly drafted by both parties. Therefore, the normal rule of construction that ambiguities are construed against the drafter is hereby waived.

35. Confidentiality. The parties shall maintain the terms of this Agreement in confidence. Notwithstanding the foregoing, the parties may disclose such information to their respective lenders, attorneys, accountants and other advisors solely for use in connection with their representation of such party regarding this Agreement or pursuant to lawful process, subpoena or court order requiring such disclosure. Buyer may also disclose this Agreement and the transactions contemplated hereby to Pacific Gas & Electric Company, Southern California Edison, San Diego Gas and Electric Company, or the California ISO, provided that the economic terms of the transaction are redacted. Neither party shall make any public announcement regarding this Agreement nor the transactions contemplated hereby without the prior written consent of the other party. Notwithstanding the foregoing, Buyer understands that Seller is subject to the California Public Records Act and that, as a result, it may disclose this Agreement upon a request under such Act or any comparable law.

36. Recording; Termination. Buyer may not record this Agreement, but concurrent with the execution hereof, Seller and Buyer shall execute a Memorandum of Purchase and Sale Agreement and Escrow Instructions (the "Memorandum") that Buyer may record in the real property records of Fresno County in the form attached hereto as Exhibit C and incorporated herein by this reference. At any time and from time to time, within 5 business days following the termination of this Agreement as to any portion of the Property, Buyer shall deliver to Escrow Holder a duly executed and acknowledged termination agreement deed in the form attached in Exhibit D, with Buyer's instructions for Escrow Holder to immediately record such termination agreement, and Seller shall join such instructions if requested by Escrow Holder.

37. Counterparts; Signatures. This Agreement may be executed in counterparts. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. Seller and Buyer hereby acknowledge and agree that they (i) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (ii) are aware that the other

party will rely on such signatures, and (iii) hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

“Seller”

Westlands Water District,  
a California water district

By: \_\_\_\_\_  
David Ciapponi  
Assistant General Manager

“Buyer”

SiteCo, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## EXHIBIT A

### LAND DESCRIPTION

Group	APN	Land Description	Acres
A	028-101-51T	SW4, SW4 NW4 & W2 NW4 NW4 Sec. 35 15/14	220.00
A	028-101-53T	W2 SE4 NW4 Sec. 35 15/14	20.00
A	028-101-70ST	NE4, NE4 NW4, & E2 NW4 NW4 Sec. 35 15/14	281.57
A	028-101-50ST	SE4 Sec. 35 15/14	160.00
B	028-101-22T	W2 SW4 Sec. 25 15/14	80.00
B	028-101-23ST	E2 SW4 Sec. 25 15/14	80.00
C	028-101-45ST	NE4 Sec. 36 15/14	158.16
C	028-101-46ST	SE4 Sec. 36 15/14	158.16
C	028-101-47ST	SW4 Sec. 36 15/14	160.00
C	028-101-48ST	NW4 Sec. 36 15/14	160.00
D	028-111-07ST	SW4 Sec. 29 15/15	160.00
D	028-111-38T	N2 N2 NW4 NW4 Sec. 32 15/15	10.00
E	028-111-60ST	318.97 Acres in N2 Sec. 31 15/15	318.97
E	028-111-50ST	0.71 Acres SW Cor NW4 31 15/15	0.71
E	028-111-52ST	SW4 Sec. 31 15/15	160.68

E	028-111-53ST	2.59 Acres SW Cor SW4 31 15/15	2.59
E	028-111-47ST	N2 SE4 Sec. 31 15/15	80.00
E	028-111-46T	N2 SW4 SE4 Sec. 31 15/15	20.00
E	028-111-45T	SW4 SW4 SE4 Sec. 31 15/15	10.00
E	028-111-44ST	SE4 SW4 SE4 & SE4 SE4 Sec. 31 15/15	50.00
F	028-111-43ST	SW4 Sec. 32 15/15	161.33
G	038-080-35ST	NW4 Sec. 6 16/15	164.96
G	038-080-03S	NE4 Sec. 6 16/15	160.00
G	038-080-38ST	SE4 Sec. 6 16/15	160.00
G	038-080-05ST	SW4 Sec. 5 16/15	160.00
H	038-080-23ST	NW4 Sec. 8 16/15	160.00
H	038-080-16ST	N2 NE4 Sec. 8 16/15	80.00
H	038-080-17ST	S2 NE4 Sec. 8 16/15	80.00
H	038-080-21ST	E2 SW4 Sec. 8 16/15	78.80
H	038-080-22ST	W2 SW4 Sec. 8 16/15	78.80
		<b>TOTAL:</b>	3,574.73

**EXHIBIT B**

FORM OF GRANT DEED

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

SiteCo, LLC  
300 California Street, 8th Floor  
San Francisco, CA 94104  
Attention: Office of the General Counsel

**MAIL TAX STATEMENTS TO:**

SiteCo, LLC  
300 California Street, 8th Floor  
San Francisco, CA 94104  
Attention: Office of the General Counsel

---

(Above Space For Recorder's Use Only)

**GRANT DEED**

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Westlands Water District, a California water district ("Grantor"), hereby grants to Recurrent Energy LLC ("Grantee"), that certain real property (the "Property") located in the County of Fresno, State of California, more particularly described in Exhibit A attached hereto and incorporated herein by reference, together with all rights, privileges and easements appurtenant to the Property, as well as all development rights, air rights, and any rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Property and (b) all improvements and fixtures located on the Property (but excluding items owned by Seller in the nature of public utility facilities).

RESERVING UNTO THE GRANTOR all minerals, oil, gas and other hydrocarbon substances on and under the Property without surface access rights onto the Property.

DATED: \_\_\_\_\_

WESTLANDS WATER DISTRICT,  
a California water district

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



**Exhibit A to Form of Grant Deed**

Legal Description

*[Insert legal description of the Property]*

## EXHIBIT C

### FORM OF MEMORANDUM OF PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

Recording requested by  
and when recorded mail to:

SiteCo, LLC  
300 California Street, 8th Floor  
San Francisco, CA 94104  
Attention: Office of the General Counsel

---

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

### **MEMORANDUM OF PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS**

---

THIS MEMORANDUM OF PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS ("Memorandum"), dated as of January \_\_, 2011 (the "Effective Date"), is entered into by and between Westlands Water District, a California water district ("Seller"), and SITECO, LLC, a Delaware limited liability company ("Buyer"). All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Agreement (defined below).

Seller and Buyer have entered into an unrecorded Purchase and Sale Agreement and Escrow Instructions dated as of January 21, 2011 (the "Purchase Agreement"), whereby Seller has agreed to sell to Buyer, and Buyer has agreed to purchase, that certain real property located in Fresno County, California, and which is more particularly described in **Exhibit A** attached hereto and made a part hereof (the "Property"), upon and subject to the terms and conditions set forth therein. The Purchase Agreement requires that the purchase of the Property be completed no later than the date that is four (4) months following the Effective Date (the "Closing Date"), although the Purchase Agreement is subject to earlier termination on the happening of various events. Buyer has the right to extend the Closing Date for up to eleven (11) successive Extension Periods, which, if Buyer exercises such right as to all possible Extension Periods, would require that the purchase of the Property be completed no later than the last day of the thirty-eighth (38th) month following the Closing Date; provided, that, so long as Buyer's Closing

Notice is received prior to the Closing Date, the actual date of Closing may occur after the Closing Date but within 90 days thereafter.

The purpose of this Memorandum is to give notice of the existence of the Purchase Agreement, which itself constitutes the agreement of the parties. This Memorandum may be executed in counterparts.

**SELLER:**

Westlands Water District,  
a California water district

By: \_\_\_\_\_  
David Ciapponi  
Assistant General Manager

**BUYER:**

SITECO, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**Exhibit A**  
**to Memorandum of Purchase Agreement**

Description of the Property

Group	APN	Land Description	Acres
A	028-101-51T	SW4, SW4 NW4 & W2 NW4 NW4 Sec. 35 15/14	220.00
A	028-101-53T	W2 SE4 NW4 Sec. 35 15/14	20.00
A	028-101-70ST	NE4, NE4 NW4, & E2 NW4 NW4 Sec. 35 15/14	281.57
A	028-101-50ST	SE4 Sec. 35 15/14	160.00
B	028-101-22T	W2 SW4 Sec. 25 15/14	80.00
B	028-101-23ST	E2 SW4 Sec. 25 15/14	80.00
C	028-101-45ST	NE4 Sec. 36 15/14	158.16
C	028-101-46ST	SE4 Sec. 36 15/14	158.16
C	028-101-47ST	SW4 Sec. 36 15/14	160.00
C	028-101-48ST	NW4 Sec. 36 15/14	160.00
D	028-111-07ST	SW4 Sec. 29 15/15	160.00
D	028-111-38T	N2 N2 NW4 NW4 Sec. 32 15/15	10.00
E	028-111-60ST	318.97 Acres in N2 Sec. 31 15/15	318.97
E	028-111-50ST	0.71 Acres SW Cor NW4 31 15/15	0.71
E	028-111-52ST	SW4 Sec. 31 15/15	160.68

E	028-111-53ST	2.59 Acres SW Cor SW4 31 15/15	2.59
E	028-111-47ST	N2 SE4 Sec. 31 15/15	80.00
E	028-111-46T	N2 SW4 SE4 Sec. 31 15/15	20.00
E	028-111-45T	SW4 SW4 SE4 Sec. 31 15/15	10.00
E	028-111-44ST	SE4 SW4 SE4 & SE4 SE4 Sec. 31 15/15	50.00
F	028-111-43ST	SW4 Sec. 32 15/15	161.33
G	038-080-35ST	NW4 Sec. 6 16/15	164.96
G	038-080-03S	NE4 Sec. 6 16/15	160.00
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G	038-080-05ST	SW4 Sec. 5 16/15	160.00
H	038-080-23ST	NW4 Sec. 8 16/15	160.00
H	038-080-16ST	N2 NE4 Sec. 8 16/15	80.00
H	038-080-17ST	S2 NE4 Sec. 8 16/15	80.00
H	038-080-21ST	E2 SW4 Sec. 8 16/15	78.80
H	038-080-22ST	W2 SW4 Sec. 8 16/15	78.80
		<b>TOTAL:</b>	3,574.73

## EXHIBIT D

### FORM OF TERMINATION AGREEMENT

Recording requested by  
and when recorded mail to:

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703-6056  
Attn: Mr. Tom Glover

---

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

### **TERMINATION OF MEMORANDUM OF PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS**

THIS TERMINATION OF MEMORANDUM OF PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (“**Termination**”) is made as of \_\_\_\_\_ by SiteCo, LLC, a Delaware limited liability company (“**Grantor**”).

**FOR A VALUABLE CONSIDERATION**, receipt of which is hereby acknowledged, Grantor hereby remises, releases and forever quitclaims unto the parties entitled thereto all of Grantor's rights and interests in the real property more particularly described in Exhibit A attached hereto, which rights and interests were set forth in that certain Purchase and Sale Agreement and Escrow Instructions dated as of January 21, 2011, a memorandum of which was recorded on January \_\_\_, 2011 as Instrument Number \_\_\_\_\_ in the Official Records of Fresno County, California.

*[Remainder of page intentionally left blank]*

**IN WITNESS WHEREOF**, Grantor has caused its duly authorized representative to execute this Termination as of the date first above written.

**GRANTOR:** SiteCo, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



STATE OF CALIFORNIA   )  
  )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that  
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

**Exhibit A**  
**to Termination of Memorandum of Purchase and Sale**  
**Agreement and Escrow Instructions**

**Legal Description**

*[Insert legal description of Property or portion thereof affected by Termination Agreement]*

## EXHIBIT E

### RELEASE LANGUAGE

Except as otherwise expressly provided in that certain Purchase and Sale Agreement and Escrow Instructions (“Agreement”) dated as of July 28, 2010 by and between Westlands Water District, a California water district (“Seller”), and SiteCo, LLC, a Delaware limited liability company, or nominee (“Buyer”), Buyer waives, releases, remises, acquits and forever discharges Seller and its successors, directors, officers, employees, agents, and volunteers (collectively, “Seller Parties”) of and from any and all suits, causes of action, legal or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorneys fees and expenses of whatever kind and nature, in law or in equity, known or unknown, which Buyer ever had, now has, hereafter can, shall or may have or acquire or possess against Seller or the Seller Parties arising out of or in any way connected with directed or indirectly out of, or in any way connected with, based upon, arising out of the condition, status, quality, nature, contamination or environmental state of the Property as it exists on the Closing Date. It is the intention of this release that any and all responsibilities and obligations of Seller and the Seller Parties to Buyer, and any and all rights or claims of Buyer, its successors and assigns and affiliated entities, as against Seller and the Seller Parties arising by virtue of the physical or environmental condition of the Property as it exists on the Closing Date are by this release provision declared null and void and of no present or future effect as to such parties. Buyer waives the benefit of California Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

## EXHIBIT E



## SECOND AMENDMENT TO AMENDED AND RESTATED OPTION AGREEMENT

This SECOND AMENDMENT TO AMENDED AND RESTATED OPTION AGREEMENT (this “**Second Amendment**”) is made, dated and effective as of March \_\_, 2013 (the “**Effective Date**”), by and between Westlands Water District, a California water district (“**Seller**”) and North Star Solar, LLC, a Delaware limited liability company, or nominee (“**Buyer**”). Each of Seller and Buyer is sometimes referred to as a “Party” and collectively as the “Parties.”

### RECITALS

A. Buyer and Seller are parties to that certain Amended and Restated Option Agreement dated August 24, 2010, a memorandum of which was recorded in the real property records of Fresno County, California on September 14, 2010 as Document No. 2010-011418, as first amended by the Parties effective as of December 14, 2011 (the “**First Amendment**”), and an Agreement Canceling Quitclaim and Reinstating Amended and Restated Option Agreement and Memorandum of Option, also dated August 24, 2010, recorded October 4, 2010 as Document No. 2010-0131474 in the Official Records of Fresno County (collectively, the “**Option Agreement**”) in connection with certain real property owned by Seller and more particularly described in the attached Exhibit A.

B. Buyer and Seller desire to amend the Option Agreement to extend the Option Term. Capitalized terms used but not defined herein shall have the meanings given to them in the Option Agreement.

NOW THEREFORE, in consideration of the mutual terms and conditions contained herein, the Parties agree to amend the Option Agreement as follows:

1. Extension of Option Term (Section 2.5). The Parties acknowledge that Buyer has exercised Extension Periods 1-6(e) as described in Section 2.5 of the Option Agreement as amended by the First Amendment and that the Option Term has currently been extended until March 30, 2013. The Parties agree that Buyer shall have up to two (2) additional quarterly Extension Periods, and that the remaining Extension Periods are shown in the table below:

Extension Option	Extension Period
6(f)	April 1, 2013 – June 30, 2013
6(g)	July 1, 2013 – September 30, 2013
6(h)	October 1, 2013 – December 31, 2013
6(i)	January 1, 2014 – March 31, 2014
6(j)	April 1, 2014 – June 30, 2014

2. The Parties agree that Buyer's extension rights and exercise procedures remain unchanged; provided, however, that the Extension Deposit for each of the two (2) additional quarterly Extension Periods designated 6(i) and 6(j), above, shall be increased to Two Hundred Fifty Thousand Dollars (\$250,000.00).

3. Buyer may prepare for Seller's prompt execution a Memorandum of this Second Amendment for recording in the Official Records of Fresno County.

4. Except as expressly modified by this Second Amendment, all terms of the Option Agreement and the First Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment to Amended and Restated Option Agreement as of the Effective Date.

**Seller:**

Westlands Water District, a California  
Water District

By: 

Name: Dave Ciapponi

Title: Secretary

**Buyer:**

North Star Solar, LLC, a Delaware limited  
liability company

By: \_\_\_\_\_

NorthLight Power, LLC, its member

Name: Dana Zentz

Title: Managing Director

SCHEDULE 1  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

SCHEDULE 1  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

Arvid D. Allen  
Mary J. Allen  
Kristy Brinkley  
Greg Brinkley  
Gwendolyn F. Benton  
Shauna Diaz  
Mark Diaz  
Gwendolyn F. Benton Survivor's Trust  
Benton Bypass Trust  
Arvid D. Allen and Mary J. Allen Living Trust  
A. E. Allen  
Cynthia Allen Best  
John K. Allen  
Denise C. Allen  
Joel P. Allen  
LaVonne R. Allen  
Richard E. Guenther  
Patricia A. Guenther  
Theodora C. Guenther  
Guenther Farms I, a California general partnership  
Guenther Farms II, a California general partnership  
Guenther Farms III, a California general partnership  
Guenther Family Trust  
Estate of Helen Etcheberry  
Jones-Villere Farms, a California general partnership  
Llanada Farms, a California general partnership  
Sarek Farms, a California general partnership  
Western Farms LP  
Carl J. E. Kriesant  
Jennie L. Kriesant Trust  
Kriesant Operating Company, Inc., a California corporation  
Edith J. Carroll 1986 Trust  
Edith J. Carroll 1995 Revocable Trust  
Blake R. O'Neill  
Brian T. O'Neill  
Shannon L. O'Neill  
Carroll/O'Neill, LP  
J.E. O'Neill, Inc., a California corporation  
O'Neill, Ltd., a California corporation  
O'Neill Farming Enterprises, Inc., a California corporation  
Humboldt Ranches (pka BRO Partnership) a California general partnership  
Laguna Farms (pka BTO Partnership) a California general partnership  
Trinity Farms (pka EJC Partnership) a California general partnership  
145 Farms (pka ERO Partnership) a California general partnership  
Excelsior Farms (pka JEO Partnership) a California general partnership



La Paloma Farms (pka SLO Partnership) a California general partnership  
 Shasta Farms (pka TBO Partnership) a California general partnership  
 Francis A. Orff  
 Trust under the Will of Angie Orff, Deceased  
 Francis Ronald Orff  
 Linda Orff  
 Michael Peck  
 Kathleen P. Hopkins  
 Patrick S. Peck  
 J. Kelly Peck  
 R. Murphy Peck  
 Amy P. Lazarus  
 M. Duff Peck  
 Maria P. Manock  
 Carolyn G. Peck  
 Trust under the Will of Norman Sumner Peck  
 Peck 8, a California general partnership  
 Peck Family Partners, a California general partnership  
 Ashley Peck Trust  
 Sumner Peck Ranch, Inc., a California corporation  
 Mendota Land Company, a California corporation  
 Pappas Land Co., a California corporation  
 Dudley Silveira  
 Charlotte Silveira  
 Darrell Silveira  
 Eric Blanchard (aka Rick Blanchard)  
 Allison Blanchard  
 Eletha Silveira  
 Silveira Family Trust One  
 Silveira Family Trust Two  
 Trust under the Will of Louis J. Silveira  
 Elsie Silveira  
 Stanley J. Silveira  
 Michael W. Silveira  
 Judy E. Silveira  
 Michael W. Silveira and Judy E. Silveira Living Trust  
 Richard G. Silveira  
 Joanne Y. Silveira  
 Miriam M. Silveira  
 Estate of Helen Stamoules  
 Pagona Stefanopoulos  
 Allen S. Thomsen  
 Thomas L. Thomsen  
 Kenneth J. Thomsen  
 Mary H. Thomsen  
 Paulette Thomsen  
 Joanne Thomsen  
 Estate of Thomas L. Thomsen, Jr., deceased  
 Veronica Thomsen Gonser  
 Elizabeth Thomsen  
 Allen S. Thomsen Trust  
 Thomas L. Thomsen Trust dated December 17, 1975

Thomas L. Thomsen Trust dated April 21, 1981  
 Kenneth J. Thomsen Trust  
 James R. Walton  
 Helen F. Walton  
 Robert L. Walton  
 Catherine Kelley  
 Andrew H. Walton  
 Virginia Sue Audino  
 Carolyn Blankenship  
 Murrieta Westlands Trust  
 Donald C. Skinner  
 Lynn W. Skinner  
 Robert H. Mueller  
 M. Joanne Mueller  
 Lionel Caeton  
 Charlotte Caeton  
 Estate of George Butts  
 Marion Butts  
 Barbara Lindemann  
 Eric Nelson  
 Polly Nelson  
 Turner Island Farms, a California corporation  
 TIMCO doing business as Murrieta Farms, a California general partnership  
 METCO, a California general partnership  
 Delta South, a California general partnership  
 Lawrence J. and Diane M. Wolfson 1988 Revocable Trust  
 Lawrence M. Wolfson 1988 Revocable Trust  
 Taylor C. Wolfson December 31, 1971 Trust  
 Ann B. Wolfson October 31, 1974 Trust  
 Elizabeth Kirkpatrick 1988 Revocable Trust  
 Lavonne Borcharding 1988 Revocable Trust  
 Stacie L. Skinner Hanson 1988 Revocable Trust  
 Lawrence S. Skinner 1988 Revocable Trust  
 Laurel L. Skinner December 20, 1976 Trust  
 Thomas C. Skinner December 20, 1976 Trust  
 Henry A. Wolfson 1988 Revocable Trust, successor to  
     Henry A. and Frances M. Wolfson 1988 Revocable Trust  
 Cherie Palazzo 1988 Revocable Trust  
 Jeannie Bruner 1988 Revocable Trust  
 Laurie Gatrell 1988 Revocable Trust  
 Aaron Henry Wolfson December 20, 1976 Trust  
 Jason T. Wolfson December 20, 1976 Trust  
 Vance Wolfson 1988 Revocable Trust  
 Charles Wolfson 1988 Revocable Trust  
 Bonnie Wear 1988 Revocable Trust  
 Susan M. Thomson 1988 Revocable Trust  
 Sharon L. Wolfson October 31, 1974 Trust  
 Gerald R. and Shirley E. Stoltenberg 1988 Revocable Trust  
 Cathy Mendoza 1988 Revocable Trust  
 Gerald B. Stoltenberg 1988 Revocable Trust  
 Jonathan Stoltenberg 1988 Revocable Trust  
 Russell C. Stoltenberg 1988 Revocable Trust

EXHIBIT A1  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

EXHIBIT A1  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

Assessor Parcel Number ("APN")	APN Owner	Family	APN Lot Acres
011 130 13 S	Allen Joel Patrick & La Vonne R	A.E. Allen	147.70
011 130 11 S	John Kevin & Denise C Allen	A.E. Allen	148.24
011 160 18S	Mendota Land Company	Seasholtz	316.38
019 050 51 S	Darrell L Silveira	D.Silveira	2.32
019 050 42 S	Darrell Louis Silveira	D.Silveira	19.07
019 050 52 S	Eric & Allison Blanchard	D.Silveira	16.48
019 050 09 S	Elsie M Silveira	E.Silveira	160.55
012 190 40 S	Jones Villere Farms	Jones	89.88
019 100 21 S	Pagona Stefanopoulos	Stamoules	156.39
019 100 33 S	Pagona Stefanopoulos	Stamoules	314.57
019 210 40 S	Pagona Stefanopoulos	Stamoules	<u>316.38</u>
		Total	<u>1687.96</u>

EXHIBIT A2  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

EXHIBIT A2  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

Assessor Parcel Number ("APN")	APN Owner	Family	APN Lot Acres
012 110 05 S	Gwendolyn F Benton/Allen Arvid D/Mary J	A.D. Allen	155.54
012 110 16 S	Kristy A Brinkley	A.D. Allen	54.82
011 130 12 S	Cynthia Allen Best	A.E. Allen	49.41
019 120 04 S	Eletha A Silveira	D.Silveira	78.39
019 120 13 S	Eletha Silveira	D.Silveira	78.23
019 120 19 S	Eletha Silveira	D.Silveira	228.12
019 120 22 S	Eletha Silveira	D.Silveira	155.17
019 180 29 S	Silveira	D.Silveira	303.82
028 101 15 S	Helen E Etcheberry	Etcheberry	20.00
028 101 62 S	Helen E Etcheberry	Etcheberry	126.27
028 101 51 S	Richard E Guenther	Guenther	60.00
028 101 22	Richard Earl & Patricia A Guenther	Guenther	80.00
028 101 23 S	Richard Earl & Patricia A Guenther	Guenther	80.00
012 180 05	Sarek Farms	Jones	33.54
012 180 10 S	Sarek Farms	Jones	114.12
012 180 12 S	Sarek Farms	Jones	8.89
012 180 13 S	Sarek Farms	Jones	239.36
012 180 14 S	Sarek Farms	Jones	37.59
012 180 18 S	Sarek Farms	Jones	49.95
012 190 02 S	Sarek Farms	Jones	246.02
012 160 24 S	Western Farms LP	Jones	6.36

Assessor Parcel Number ("APN")	APN Owner	Family	APN Lot Acres
012 160 25 S	Western Farms LP	Jones	128.58
012 190 09	Western Farms LP	Jones	11.84
012 190 14 S	Western Farms LP	Jones	77.50
019 180 31 S	Carl J E Kriesant	Kriesant	316.57
019 180 32 S	Kriesant Operating Co Inc	Kriesant	160.00
012 150 10 S	Judy E Silveira	M Silveira	318.17
019 120 01	Miriam M. Silveira	Mir. Silveira	1.29
019 120 14 S	Miriam M Silveira	Mir.Silveira	236.78
060 090 42 S	Carroll/O'Neill, LP	O'Neill	320.00
060 030 21 S	Carroll/O'Neill, LP	O'Neill	157.82
050 120 45 S	Laguna Farms	O'Neill	160.00
060 030 24 S	Laguna Farms	O'Neill	320.00
050 080 05 S	Trinity Farms	O'Neill	160.00
060 090 41 S	Trinity Farms	O'Neill	320.00
060 042 10 S	Edwin R. O'Neill	O'Neill	1.00
028 110 13	Francis A Orff	Orff	40.00
028 110 24	Francis A Orff	Orff	40.00
028 110 26 S	Francis A Orff	Orff	20.00
028 110 70 S	Francis A Orff	Orff	161.33
028 110 86S	Francis A Orff	Orff	20.00
028 110 54 S	Francis Ronald & Linda Orff	Orff	47.50
038 320 23 S	Amy N Peck Lazarus	Peck	156.82
028 110 47 S	Carolyn G Peck	Peck	160.68
028 101 46 S	John Kelly Peck	Peck	158.16
038 080 45 S	Maria Kate Manock	Peck	157.56

Assessor Parcel Number ("APN")	APN Owner	Family	APN Lot Acres
038 320 18 S	Maury D Peck	Peck	160.00
028 101 48 S	Michael C Peck	Peck	160.00
028 101 45 S	Patrick S Peck	Peck	158.16
028 110 46 S	Peck Family Partners	Peck	2.59
038 320 17	R Murphy Peck	Peck	161.03
038 080 39 S	Sumner Peck Ranch Inc	Peck	0.04
038 080 40 S	Sumner Peck Ranch Inc	Peck	0.05
038 080 44 S	Sumner Peck Ranch Inc	Peck	8.37
028 101 47 S	William T & Kathleen P Hopkins	Peck	160.00
012 150 11 S	Richard G & Joanne Y Silveira	R Silveira	106.05
019 050 61 S	Pappas Land Company	Seasholtz	321.04
050 030 28 S	Allen S Thomsen, Trustee Et Al	Thomsen	160.00
050 070 42 S	Kenneth & Paulette Thomsen	Thomsen	80.00
050 070 43 S	Kenneth & Paulette Thomsen	Thomsen	160.00
019 050 16 S	James R Walton	Walton	158.14
019 160 19	Lindemann	Wolfsen	9.10
019 210 39S	Lindemann	Wolfsen	316.38
028 150 08 S	Belden Laura K Trustee	Wolfsen	5.00
019 110 09	Michael StPeter	Wolfsen	158.19
019 110 14 S	Michael StPeter	Wolfsen	314.56
019 110 15 S	Michael StPeter	Wolfsen	158.18
019 110 16	Michael StPeter	Wolfsen	156.38
019 120 29 S	Michael StPeter	Wolfsen	317.07
019 170 02	Michael StPeter	Wolfsen	477.55
Assessor Parcel	APN Owner	Family	APN Lot



Number ("APN")			Acres
019 170 03	Michael StPeter	Wolfsen	474.56
019 170 12	Michael StPeter	Wolfsen	316.37
019 170 13	Michael StPeter	Wolfsen	138.18
019 170 16	Michael StPeter	Wolfsen	159.09
028 150 09 S	Michael StPeter	Wolfsen	5.00
028 150 46 S	Michael StPeter	Wolfsen	<u>145.42</u>
		Total	<u>10803.69</u>

EXHIBIT A3  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

EXHIBIT A3  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

Assessor Parcel Number ("APN")	APN Owner	Family	APN Lot Acres
012 110 16 S	Kristy A Brinkley	A.D. Allen	103.36
012 110 25 S	Kristy A Brinkley	A.D. Allen	13.15
012 110 22 S	Kristy Brinkley	A.D. Allen	53.50
012 110 24 S	Shauna B Diaz	A.D. Allen	40.35
011 130 12 S	Cynthia Allen Best	A.E. Allen	49.41
019 110 05 S	Darrell Silveira	D.Silveira	156.38
019 110 06 S	Dudley & Charlotte J Silveira	D.Silveira	156.38
019 110 13 S	Dudley James & Charlotte J Silveira	D.Silveira	472.70
019 050 48 S	Eric & Allison Blanchard	D.Silveira	36.80
019 050 19 S	Rick & Allison Blanchard	D.Silveira	79.09
019 050 59 S	Rick & Allison Blanchard	D.Silveira	77.43
028 101 62 S	Helen E Etcheberry	Etcheberry	146.27
038 320 27 S	Guenther Family Trust	Guenther	20.00
028 101 51 S	Richard E Guenther	Guenther	160.00
038 320 25 S	Richard E Guenther	Guenther	20.00
028 101 53	Richard Earl & Patricia A Guenther	Guenther	20.00
038 320 24 S	Richard Earl & Patricia A Guenther	Guenther	20.00
012 120 15 S	Jones Villere Farms	Jones	476.02
012 150 09 S	Llanada Farms	Jones	155.56
012 180 17 S	Sarek Farms	Jones	150.79

Assessor Parcel Number ("APN")	APN Owner	Family	APN Lot Acres
012 190 25 S	Western Farms LP	Jones	306.78
019 180 01 S	Kriesant Operating Co Inc	Kriesant	320.00
019 180 32 S	Kriesant Operating Co Inc	Kriesant	156.57
019 120 21 S	Miriam M Silveira	Mir.Silveira	155.17
060 041 02	Edwin R. O'Neill	O'Neill	0.60
060 041 03	145 Farms	O'Neill	383.98
060 030 19 S	Carroll/O'Neill, LP	O'Neill	157.56
060 042 13 S	Excelsior Farms	O'Neill	160.78
060 042 16 S	Humboldt Ranches	O'Neill	160.00
060 042 22 S	Humboldt Ranches	O'Neill	80.00
060 042 17 S	La Paloma Farms	O'Neill	160.00
060 042 18 S	La Paloma Farms	O'Neill	160.00
060 030 29 S	Trinity Farms	O'Neill	157.60
028 110 05	Francis A Orff	Orff	20.00
028 110 07 S	Francis A Orff	Orff	160.00
028 110 31 S	Francis A Orff	Orff	30.00
028 110 32 S	Francis A Orff	Orff	22.50
028 110 33	Francis A Orff	Orff	10.00
028 110 34	Francis A Orff	Orff	30.00
028 110 35	Francis A Orff	Orff	4.13
028 110 36	Francis A Orff	Orff	20.00
028 110 39 S	Francis A Orff	Orff	50.00
028 110 30 S	Francis Ronald Orff	Orff	15.00
028 110 45	Francis A Orff	Orff	10.00

Assessor Parcel Number ("APN")	APN Owner	Family	APN Lot Acres
038 071 28	Michael C Peck	Peck	39.44
038 080 05 S	Kathleen P Hopkins	Peck	160.00
038 080 18 S	Kathleen P Hopkins	Peck	157.60
038 080 35 S	Kathleen P Hopkins	Peck	164.96
038 080 16 S	J. Kelly Peck, Trustee of Ashley Peck Trust	Peck	80.00
038 080 17 S	J. Kelly Peck, Trustee of Ashley Peck Trust	Peck	80.00
038 080 03 S	Peck Family Partners	Peck	160.00
038 080 38 S	Peck Family Partners	Peck	160.00
038 080 04 S	Peck Ranch Inc Sumner	Peck	160.29
038 080 23 S	Peck Ranch Inc Sumner	Peck	160.00
038 320 33 S	Peck Ranch Inc Sumner	Peck	102.53
038 320 34 S	Peck Ranch Inc Sumner	Peck	13.99
038 071 25	Sumner Peck Ranch Inc	Peck	40.00
012 150 11 S	Richard G & Joanne Y Silveira	R Silveira	106.06
019 040 04 S	Pappas Land Company	Seasholtz	161.14
019 040 05 S	Pappas Land Company	Seasholtz	161.06
050 060 46 S	Elizabeth Thomsen	Thomsen	52.53
050 060 48 S	Kenneth & Paulette Thomsen	Thomsen	105.07
050 060 47 S	Veronica Thomsen Gonser	Thomsen	52.53
019 050 50 S	James R Walton	Walton	237.29
019 160 34S	Lindemann	Wolfsen	377.53
028 150 49	Caeton Lionel J;Charlotte J Trs	Wolfsen	18.77
019 210 50	Caeton Lionel J;Charlotte J Trustees	Wolfsen	10.00
019 110 09	Michael StPeter	Wolfsen	316.38

Assessor Parcel Number ("APN")	APN Owner	Family	APN Lot Acres
019 170 02	Michael StPeter	Wolfsen	159.18
019 170 03	Michael StPeter	Wolfsen	158.19
019 170 12	Michael StPeter	Wolfsen	316.37
019 170 16	Michael StPeter	Wolfsen	318.18
019 210 52 S	Michael StPeter	Wolfsen	134.28
019 210 53 S	Michael StPeter	Wolfsen	9.55
028 130 45 S	Michael StPeter	Wolfsen	155.58
028 130 47 S	Michael StPeter	Wolfsen	315.07
028 140 38 S	Michael StPeter	Wolfsen	155.33
028 150 01 S	Michael StPeter	Wolfsen	315.48
028 150 46 S	Michael StPeter	Wolfsen	112.21
028 150 47 S	Michael StPeter	Wolfsen	4.78
028 150 48	Michael StPeter	Wolfsen	19.66
028 160 14 S	Michael StPeter	Wolfsen	158.20
		Total	<u>10547.07</u>

EXHIBIT A4  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

EXHIBIT A4  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

Assessor Parcel Number ("APN")	APN Owner	Family	APN Lot Acres
012 110 25 S	Kristy A Brinkley	A.D. Allen	25.52
012 110 22 S	Kristy Brinkley	A.D. Allen	106.50
012 110 24 S	Shauna B Diaz	A.D. Allen	78.32
011 130 12 S	Cynthia Allen Best	A.E. Allen	49.41
019 050 55 S	Dudley James & Charlotte J Silveira	D.Silveira	160.13
019 050 56 S	Dudley James & Charlotte J Silveira	D.Silveira	469.69
019 110 03 S	Dudley James & Charlotte J Silveira	D.Silveira	314.60
019 110 04 S	Dudley James & Charlotte J Silveira	D.Silveira	156.38
028 101 62 S	Helen E Etcheberry	Etcheberry	146.27
038 320 30 S	Guenther	Guenther	20.00
038 320 06 S	Guenther Richard E Trustee et al	Guenther	38.20
038 320 12 S	Richard E Guenther	Guenther	20.00
038 320 26 S	Richard E Guenther	Guenther	40.00
038 320 28 S	Richard E Guenther	Guenther	20.00
038 320 29 S	Richard E Guenther	Guenther	20.00
038 320 01 S	Richard Earl & Patricia A Guenther	Guenther	39.29
012 110 08 S	Llanada Farms	Jones	316.40
012 110 09 S	Llanada Farms	Jones	320.00
012 150 07 S	Llanada Farms	Jones	109.05
012 190 26 S	Western Farms LP	Jones	308.86



Assessor Parcel Number ("APN")	APN Owner	Family	APN Lot Acres
028 101 17 S	Carl J E Kriesant	Kriesant	15.00
028 101 50 S	Carl J E Kriesant	Kriesant	160.00
038 320 13 S	Carl J E Kriesant	Kriesant	10.00
038 320 31 S	Carl J E Kriesant	Kriesant	20.00
019 180 01 S	Kriesant Operating Co Inc	Kriesant	314.83
019 120 23 S	Miriam M Silveira	Mir.Silveira	74.82
060 050 29 S	Blake Randle O'Neill	O'Neill	11.14
060 042 12 S	Excelsior Farms	O'Neill	151.57
060 042 15 S	Excelsior Farms	O'Neill	160.00
060 042 21 S	Excelsior Farms	O'Neill	160.00
060 042 04 S	Humboldt Ranches	O'Neill	309.02
060 042 24 S	Humboldt Ranches	O'Neill	7.12
060 042 03 S	La Paloma Farms	O'Neill	280.53
050 120 40 S	JE O'Neill, Inc	O'Neill	5.95
060 042 09 S	JE O'Neill, Inc	O'Neill	6.69
060 050 38 S	Shasta Farms	O'Neill	9.08
060 050 39 S	Shasta Farms	O'Neill	9.08
060 050 40 S	Shasta Farms	O'Neill	299.18
060 050 41 S	Shasta Farms	O'Neill	307.40
028 110 44	Francis A Orff	Orff	20.00
028 110 74 S	Francis A Orff	Orff	80.00
028 110 79 S	Francis A Orff	Orff	323.16
028 110 49 S	Francis A Orff	Orff	0.52

Assessor Parcel Number ("APN")	APN Owner	Family	APN Lot Acres
028 110 55S	Francis A Orff	Orff	1.13
038 071 21	Carolyn G Peck	Peck	37.88
038 071 22 S	Carolyn G Peck	Peck	37.85
038 071 26	Carolyn G Peck	Peck	40.00
038 071 27 S	Carolyn G Peck	Peck	120.00
038 150 65 S	Carolyn G Peck	Peck	160.00
038 150 68 S	Carolyn G Peck	Peck	85.99
038 080 12 S	Kathleen P Hopkins	Peck	20.00
038 080 13 S	Kathleen P Hopkins	Peck	19.10
038 080 14 S	Kathleen P Hopkins	Peck	119.10
038 141 35 S	Kathleen P Hopkins	Peck	37.07
038 141 48 S	Kathleen P Hopkins	Peck	122.30
038 150 64 S	Kathleen P Hopkins	Peck	158.19
038 080 21 S	Peck Ranch Inc Sumner	Peck	78.80
038 080 22 S	Peck Ranch Inc Sumner	Peck	78.80
038 080 25 S	Peck Ranch Inc Sumner	Peck	158.19
038 080 32 S	Peck Ranch Inc Sumner	Peck	83.69
038 080 33 S	Peck Ranch Inc Sumner	Peck	83.69
012 150 11 S	Richard G & Joanne Y Silveira	R Silveira	106.06
011 160 15 S	Mendota Land Company	Seasholtz	60.00
011 160 16 S	Mendota Land Company	Seasholtz	80.00
011 160 17 S	Mendota Land Company	Seasholtz	78.19
050 070 41 S	Joanne C Thomsen	Thomsen	80.00
050 070 40 S	Thomas L Thomsen	Thomsen	160.00

Assessor Parcel Number ("APN")	APN Owner	Family	APN Lot Acres
019 210 50	Caeton Lionel J;Charlotte J Trustees	Wolfsen	35.00
028 130 02	Chase Thomas Daniel;Mary Antoinette K	Wolfsen	20.00
019 210 44	Heafey Derek	Wolfsen	27.77
019 160 13 S	Lindemann Barbara Butts Trustee	Wolfsen	158.18
019 160 35 S	Lindemann Barbara Butts Trustee	Wolfsen	236.36
028 140 05	Mc Fie Marshall N II Trustee	Wolfsen	40.00
028 140 21	Mc Fie Marshall N II Trustee	Wolfsen	40.00
019 110 09	Michael StPeter	Wolfsen	158.19
019 110 10	Michael StPeter	Wolfsen	632.76
019 170 16	Michael StPeter	Wolfsen	159.09
019 210 41S	Michael StPeter	Wolfsen	55.00
019 210 48	Michael StPeter	Wolfsen	14.34
019 210 51	Michael StPeter	Wolfsen	25.00
019 210 52 S	Michael StPeter	Wolfsen	278.15
019 210 53 S	Michael StPeter	Wolfsen	9.55
028 130 15	Michael StPeter	Wolfsen	20.00
028 130 43 S	Michael StPeter	Wolfsen	1.00
028 130 45 S	Michael StPeter	Wolfsen	425.73
028 130 47 S	Michael StPeter	Wolfsen	275.69
028 140 17 S	Michael StPeter	Wolfsen	20.00
028 140 38 S	Michael StPeter	Wolfsen	326.90
028 140 39 S	Michael StPeter	Wolfsen	39.09

Assessor Parcel Number ("APN")	APN Owner	Family	APN Lot Acres
028 150 01 S	Michael StPeter	Wolfsen	309.48
028 150 31	Michael StPeter	Wolfsen	20.00
028 150 46 S	Michael StPeter	Wolfsen	174.84
028 130 12 S	Turner Island Farms	Wolfsen	19.54
028 130 46 S	Turner Island Farms	Wolfsen	20.14
019 210 06	Turner Island Farms Inc	Wolfsen	10.00
019 210 49	Turner Island Farms Inc	Wolfsen	<u>9.56</u>
		Total	<u>11061.09</u>

EXHIBIT B  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

## LAND USE AGREEMENT

This LAND USE AGREEMENT, hereinafter referred to as the "Agreement", made and entered into by and between Westlands Water District, a local public agency of the State of California, hereinafter designated as the "District", and \_\_\_\_\_

hereinafter designated as the "User", do mutually agree as follows:

WHEREAS, in connection with settlement of the lawsuit entitled *Sumner Peck Ranch, Inc., et al. v. United States of America, et al.*, Civ. No. F-91-048 OWW (E.D. Ca.), the District will acquire certain real property situated in the County of Fresno and described on Exhibit "A" attached hereto (the "Property") and by this reference made a part hereof;

WHEREAS the terms of the settlement, including timing of close of escrow on the Property, are set forth in a separate document entitled "Agreement Among the United States, Westlands Water District, and the Peck Plaintiffs For Settlement of the Sumner Peck Lawsuit" (the "Settlement Agreement"), and

WHEREAS the User has existing crop(s) growing on said Property, The District does hereby convey to User the right to continue to grow and harvest such crop(s) subject to the following:

1. **Term.** The term of this Agreement shall commence on the date escrow is closed on the Property, and shall continue through the harvest of the final crop(s) now presently growing on the Property, but in no case shall the term of this Agreement extend beyond **December 31, 200\_\_**. Upon the harvest of the final crop(s), User shall provide written notice of such action to the District and upon the giving of said notice, this Agreement shall terminate as to all (or any portion specified in said notice) of the Property subject to this Agreement. After said notice, User shall surrender all of the portions specified in said notice as final crops are harvested therefrom, and after User has performed the work required pursuant to paragraph 12 herein below.
2. **Use of Property.** The Property is for the use of irrigating, caring for and harvesting of final crops and for uses incidental thereto. In its said uses, User will comply with all requirements of law and governmental regulations thereunder. The Property shall not be used, or permitted to be used, for any purpose other than the purpose for which this Agreement is entered into. Without limiting the generality of the foregoing, User shall not apply to, use upon, possess or store upon the Property any substance or chemical as designated by the United States or the State of California or any office or agency thereof, as causing cancer or reproductive toxicity as determined in accordance with the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as Proposition 65) or any other law or regulation, except agricultural chemicals necessary to the growing and harvesting of the crops now growing on the Property. User agrees that all application of such agricultural chemicals must meet the restrictions and permits required by the County Agricultural Commissioner in the State of California and all other governmental regulations. User agrees to control and dispose of containers according to legal requirements, and hold the District harmless for the use, storage, or disposal of any agricultural chemicals.
3. **Indemnity and Insurance.** User agrees to release and indemnify and save harmless the District from and against liability, claims, causes of action, cost and expense for any and

all injuries, deaths, losses or damages and destruction from any cause whatsoever, arising out of the use of the Property by the User or the agents, employees and invitees of User. In addition, User agrees to carry general liability insurance, insuring the District as well as User of and from claims in an amount of not less than \$1,000,000 bodily injury and property damage per occurrence and \$2,000,000 general aggregate. User shall furnish the District with a copy of such insurance policy or certificate of insurance showing that User is protected and will continue to be protected until at least 30 days after written notice by the insurer to User of the termination or expiration of the term of such policy. User shall at its sole cost and expense, procure and maintain fire and extended coverage insurance covering structures on the Property in an amount reasonably acceptable to the District.

4. **Taxes and Water Charges.** User shall pay all taxes levied by the County of Fresno or any subdivision thereof or other taxing authority levying or imposing taxes or assessments upon or with respect to the Property which are payable for any period during the term of this Agreement. Any taxes or assessments levied against the Property by the District, and any installment of bonded indebtedness collected by means of assessment on this Property payable during the term of this Agreement shall be paid as provided in the Settlement Agreement. Whereas User has previously received District water for the existing crop(s), User's continued right to receive District water under this Agreement is contingent upon the District having received from User, on or before the close of escrow for the Property, payment for all District water charges, including, but not limited to, water delivered charges, unused water charges, and the estimated delivered cost of water remaining in User's Westlands Water District account ("User's Water Account") as of the close of the aforesaid escrow. On or before close of escrow for the Property, User shall notify the District of what quantity of the water remaining in User's Water Account, that User requires for use during the period from the close of escrow until termination of this Agreement. Any amount of water remaining in User's Water Account on the date of the close of escrow, that User does not specify that it requires, shall revert to the District for the District's use and disposal. User is not required to pay for water remaining in User's Water Account on the date of the close of escrow, that User does not specify that it requires. User is not entitled to a refund from the District of water charges paid by User for any water that remains unused as of the termination of this Agreement. Any water that remains unused in User's Water Account as of the termination of this Agreement shall revert to the District for its use and disposal.

In lieu of payment of all water charges on or before the close of escrow for the Property, User may pay the monthly amount due, if prior to the close of escrow for the Property, User has provided the District with a guarantee that all water charges will be paid monthly. The guarantee shall cover all water to be used through February 28, 200\_\_. The guarantee shall consist of either a payment bond, certificate of deposit, irrevocable letter of credit, a notice of line of credit (with evidence of an order to pay loan funds) from a recognized financial or lending institution, or other similar acceptable guarantee which provides for payment to the District.

5. **Farming Practices.** User agrees to use and bear at his own expense, the best known practices and measures to prevent the entry and growth of Johnson grass, morning glory, Bermuda grass, knapweed, and other noxious weeds or grasses upon the Property. Such

measures shall include prevention on adjacent or adjoining public and private roads, ditches, banks, fence lines, lanes and ways. Provided, however, that no poison, herbicide, pesticide, fertilizer or other chemical or substance shall be applied on or about the Property unless, at the time of its use, it is approved for such use, in the method and quantity to be used, by the United States Department of Agriculture and California Department of Agriculture.

6. **Improvements and Mechanic's Liens.** User shall not construct, alter, or repair structures of any character upon said Property without the written consent of the District, which consent shall not be unreasonably withheld. User shall pay for all material joined or affixed to said Property, and pay in full all persons who perform labor upon said Property at User's request. User shall not permit or suffer any mechanic's or materialmen's liens of any kind or nature to be enforced against said Property for any work done, or materials furnished thereon, at User's request. User agrees to indemnify and hold District harmless against any and all such liens.
7. **Covenant Against Waste.** User shall not do or permit any waste of or upon said Property.
8. **Repairs and Upkeep.** User shall keep in good repair and condition all buildings, fences, wells and other improvements now located upon the land and are now the Property of the District. Upon the termination of this Agreement, User shall leave the same in as good repair as they are now, damage by acts of God, the elements, and ordinary wear and tear excepted. The District shall not be called upon to make any repairs or incur any expenses of any kind or nature, upon or in connection with the Property or improvements, for and during the term of the Agreement.
9. **Default.** In the event of or upon the breach of any term or condition herein contained and to be kept and performed on the part of User, the District may, at the District's option, and after 15 days written notice to User to cure said breach, and the failure of User to cure such breach within such time period if such breach can be cured within said time period, and if not, then the failure of User to commence within said 15 day period to remedy said breach, declare that such breach constitutes a default under this Agreement. In the event of default, the District may terminate this Agreement, enter said Property and take possession thereof, ousting all persons and equipment therefrom without liability to any such person or damage to such person or property sustained by reason of such removal. Any indebtedness owed to the District by User, shall become due and payable 30 days after the date of termination. Should User fail to pay any sum payable in the time provided for, then User shall pay interest on such sum at the highest lawful rate under the laws of California, from the date said payment is due and until the same is fully paid.
10. **Quiet Surrender.** Upon termination of the Agreement, either wholly or in part, User shall surrender and deliver unto the District the quiet and peaceable possession of said Property or that portion thereof to which the Agreement shall be terminated.
11. **Notices.** All notices, requests, and other communications hereunder shall be in writing given by personal delivery, facsimile, overnight courier or by certified mail, return receipt requested and shall be deemed to have been given four days after deposit in the United States mail in a sealed envelope, postage prepaid, registered or certified mail, (or if by personal delivery, facsimile or overnight courier, at the time of delivery or receipt), and addressed as follows:



To District: Westlands Water District  
3130 No. Fresno Street  
P.O. Box 6056  
Fresno, CA 93703-6056  
Facsimile No. 559-241-6277

To User: \_\_\_\_\_

Any party hereto may, by written notice, change the address to which such demands, notices, or statements to such party may be sent.

12. **Shredding and Discing.** With respect to any portion of the Property used to farm cotton, within two weeks or as soon thereafter as weather permits, after the cotton is harvested, User shall (a) shred all cotton stalks remaining on such portion and (b) disc the soil of any such portion twice all in compliance with Fresno County pink bollworm plow down regulations. Within two weeks or as soon thereafter as weather permits, after harvest of any other crops, User shall disc all crop residues. No later than two weeks prior to the termination of this Agreement, User shall disc any portion of the Property not farmed and containing weeds or abandoned crops until all weed and crop residue is thoroughly mixed with the soil. Upon compliance with the requirements of this section, the \$25 per acre sum held by the Escrow Holder shall be released in accordance with paragraph 5.f. of the Settlement Agreement.
13. **District's Right of Entry.** Upon reasonable oral or written notice to User, District and its agents or representatives shall have the right to enter upon the Property, to inspect the same or any crops growing or harvested thereon or being removed therefrom, the improvements therein, appurtenances thereto, and all equipment located thereon. District shall have the right to enter the Property to exercise, protect, or defend any of the rights reserved to the District herein. User shall supply the District, its agents or representatives with keys or other instruments necessary to effect entry only to the Property.
14. **No Warranty.** User acknowledges that District has made no warranty and no warranty is implied by reason of this Agreement concerning the availability or sufficiency of water or any other utility for use upon the Property; nor has District made any warranty concerning the sufficiency of wells, pumping plants, canals, pipelines or any other irrigation equipment for the provision of water to the crop(s), any dwellings, or machinery; nor has District made any warranty concerning the sufficiency of any provisions for the control of flooding of the Property.
15. **Attorney's Fees.** Should any litigation be commenced between the parties hereto concerning the Property, this Agreement, the rights and duties of either in relation thereto, the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to reasonable attorney's fees.

IN WITNESS WHEREOF, the parties have executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**DISTRICT:**

WESTLANDS WATER DISTRICT

By: \_\_\_\_\_

Thomas Birmingham  
General Manager

USER:

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EXHIBIT C  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

RECORDING REQUESTED BY  
WESTLANDS WATER DISTRICT  
U.S. BUREAU OF RECLAMATION  
WHEN RECORDED MAIL TO

NAME Westlands Water District  
ADDRESS 3130 N. Fresno Street  
CITY Fresno  
STATE & ZIP CA 93703

NAME U.S. Bureau of Reclamation  
ADDRESS 1243 "N" Street  
CITY Fresno  
STATE & ZIP CA 93721-1813

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**DECLARATION OF  
RESTRICTIVE COVENANT  
(Nonirrigation Covenant)**

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APN:

Westlands Water District ("Westlands" and/or "Owner"), owns the farmlands in Fresno County, California, described in Exhibit "A" attached hereto ("the Subject Lands"). Owner executes this Declaration of Restrictive Covenant (Nonirrigation Covenant) ("Restrictive Covenant") pursuant to the terms and conditions contained in the Settlement Agreement dated \_\_\_\_\_, 2002 ("Settlement"), in the lawsuit entitled Sumner Peck Ranch, Inc., et al. vs. United States of America, et al., CIV. No. F-91-048 OWW, in the United States District Court for the Eastern District of California, Fresno Division, and related proceedings in the United States Court of Federal Claims ("the Court of Federal Claims Lawsuit"), entered into by the following parties: **SUMNER PECK RANCH, INC., ET AL.** ("the Peck Plaintiffs"), the **UNITED STATES OF AMERICA** ("the United States"), and **WESTLANDS**.

The Westlands Water District contains the real property legally described in Exhibit "B", attached hereto and made a part hereof ("District Area"), which includes the Subject Lands. As set forth below, the District Area, exclusive of the Subject Lands, shall benefit from the imposition of this Restrictive Covenant on the Subject Lands ("Benefited Lands"). Westlands is an owner of a portion of the Benefited Lands legally described in Exhibit "C", attached hereto and made a part hereof ("Westlands Land"). The United States is an owner of a portion of the Benefited Lands legally described in Exhibit "D", attached hereto and made a part hereof ("United States Land").

This Restrictive Covenant shall run with the Subject Lands, shall prohibit irrigation of the Subject Lands, as set forth below, and shall be binding upon Owner, upon Owner's heirs, successors and assigns, and upon all subsequent owners of the Subject Lands and all persons asserting any legal, equitable, or security interest of any nature in the Subject Lands. This Restrictive Covenant shall run with the Benefited Lands including, but not limited to the Westlands Land and United States Land. The Benefited Lands are benefited in that the Subject Lands shall not be irrigated, as set forth below, thereby increasing the amount of Central Valley Project water that may be allocated to the Benefited Lands and decreasing the amount of land that may require drainage.

Owner, for Owner and for Owner's heirs, successors and assigns, agrees that the Subject Lands shall not be irrigated from any source, including, without limitation, Central Valley

Project water and groundwater pumped locally or elsewhere, for agricultural purposes or for any other purpose except as necessary to restore the Subject Lands to native upland habitat. However, notwithstanding the foregoing restriction, Westlands may construct, operate or maintain groundwater wells for the purpose of extracting groundwater for beneficial use on the Benefited Lands.

Owner agrees that upon the transfer of its interest in any portion of the Subject Lands, that the transfer document shall contain a statement acknowledging that the property interest transferred therein is subject to this Declaration of Restrictive Covenant (Nonirrigation Covenant). The transfer document statement shall include the full recording information of this Restrictive Covenant.

Pursuant to the terms and conditions of the Settlement, this Restrictive Covenant may be enforced by the United States, to the extent that the United States is an owner of a portion of the Benefited Lands, and this Restrictive Covenant may be enforced by Westlands, to the extent that Westlands is an owner of a portion of the Benefited Lands, in the United States District Court, Eastern District of California, Fresno Division, or in any other court of competent jurisdiction; and the United States and/or Westlands shall be entitled to reasonable attorneys fees in any such enforcement proceedings. "Enforced", as used in this paragraph, includes, without limitation, injunctive enforcement.

Dated: \_\_\_\_\_, 200\_\_

**WESTLANDS/OWNER:**

***WESTLANDS WATER DISTRICT***

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Appropriate Notarial Acknowledgments]

**EXHIBIT "A"**  
[Description of Subject Land]

**EXHIBIT "B"**  
[Description of District Area]

**EXHIBIT "C"**  
[Description of Westlands Land]



**EXHIBIT "D"**  
[Description of United States Land]

EXHIBIT D  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

EXHIBIT E  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

1 THOMAS L. SANSONETTI  
Assistant Attorney General  
2 Environment and Natural Resources Division  
United States Department of Justice  
3  
4 MARIA A. IIZUKA (CA 146224; D.C. 952069; MD)  
Environment and Natural Resources Division  
United States Department of Justice  
5 501 "I" Street, Suite 9-700  
Sacramento, CA 95814  
6 (916) 930-2202  
7 JOHN K. VINCENT  
United States Attorney  
8 YOSHINORI H.T. HIMEL (CA 66194)  
Assistant United States Attorney  
9 501 "I" Street, Suite 10-100  
Sacramento, CA 95814  
10 (916) 554-2760

11 Attorneys for Federal Defendants

12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE EASTERN DISTRICT OF CALIFORNIA

14		)	
15	SUMNER PECK RANCH, INC.,	)	CV-F-91-048-OWW
16	et al.,	)	
17	Plaintiffs,	)	JOINT MOTION FOR ENTRY OF
18		)	CONSENT JUDGMENT PURSUANT TO
19	v.	)	SETTLEMENT
20	BUREAU OF RECLAMATION, et al.,	)	
21	Defendants.	)	

22 NOTICE

23 PLEASE TAKE NOTICE that the plaintiffs - persons and entities  
24 listed on Schedule 1 attached hereto (collectively "the Peck  
25 Plaintiffs") - and the defendants, the United States of America,  
26 Department of the Interior, Bureau of Reclamation ("the United  
27 States" or "Federal Defendants") (collectively "the joint  
28 movants"), without objection by defendant Westlands Water District,  
hereby jointly move the Court as herein set forth.

EXHIBIT E

1 MOTION

2 For the reasons set forth herein, the Peck Plaintiffs and the  
3 Federal Defendants, with the consent of defendant Westlands Water  
4 District ("Westlands"), hereby jointly move this Court for the  
5 entry of a consent judgment on the terms and conditions set forth  
6 in the proposed Partial Final Consent Judgment lodged with this  
7 motion. The Peck Plaintiffs, Federal Defendants and Westlands  
8 (collectively, "the parties to the Peck Settlement") on December  
9 11, 2002 entered into the "AGREEMENT AMONG THE UNITED STATES,  
10 WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS FOR SETTLEMENT OF  
11 THE SUMNER PECK LAWSUIT" (hereinafter "the Peck Settlement"), for  
12 the purpose of compromising and settling this litigation, and  
13 resolving the disputes that have arisen between and among them  
14 without further litigation and without admitting or conceding  
15 liability. The joint movants respectfully request the Court to  
16 enter the consent judgment.

17 DATE: SMILAND & KHACHIGIAN  
18 WILLIAM SMILAND  
THEODORE A. CHESTER, JR.

19  
20 By \_\_\_\_\_  
Attorneys for the Peck Plaintiffs

21 THOMAS L. SANSONETTI  
22 Assistant Attorney General  
23 Environment and Natural Resources Division  
United States Department of Justice

24  
25 \_\_\_\_\_  
26 MARIA A. IIZUKA  
27 Environment and Natural Resources Division  
United States Department of Justice  
501 "I" Street, Suite 9-700  
28 Sacramento, CA 95814  
(916) 930-2202

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JOHN K. VINCENT  
United States Attorney

---

YOSHINORI H.T. HIMEL (CA 66194)  
Assistant United States Attorney  
501 "I" Street, Suite 10-100  
Sacramento, CA 95814  
(916) 554-2760

Attorneys for Federal Defendants

EXHIBIT F  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

1 THOMAS L. SANSONETTI  
Assistant Attorney General  
2 Environment and Natural Resources Division  
United States Department of Justice  
3

MARIA A. IIZUKA (CA 146224; D.C. 952069; MD)  
4 Environment and Natural Resources Division  
United States Department of Justice  
5 501 "I" Street, Suite 9-700  
Sacramento, CA 95814  
6 (916) 930-2202

7 JOHN K. VINCENT  
United States Attorney  
8 YOSHINORI H.T. HIMEL (CA 66194)  
Assistant United States Attorney  
9 501 "I" Street, Suite 10-100  
Sacramento, CA 95814  
10 (916) 554-2760

11 Attorneys for Federal Defendants

12 IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
13

14		)	
		)	CV-F-91-048-OWW
15	SUMNER PECK RANCH, INC.,	)	
	et al.,	)	PARTIAL FINAL CONSENT
		)	JUDGMENT
16	Plaintiffs,	)	
		)	
17	v.	)	
		)	
18	BUREAU OF RECLAMATION, et al.,	)	
		)	
19	Defendants.	)	
		)	

20  
21 THIS MATTER having come before the Court on the Joint Motion  
22 for Entry of Consent Judgment Pursuant to Settlement filed by the  
23 plaintiffs identified therein as "the Peck Plaintiffs", and the  
24 defendants identified therein as "the United States" or "Federal  
25 Defendants," without objection by defendant Westlands Water  
26 District, and the Court being fully advised in the premises, NOW



1 THEREFORE IT IS ORDERED AND ADJUDGED:

2 1. That pursuant to, and in accordance with, the "AGREEMENT  
3 AMONG THE UNITED STATES, WESTLANDS WATER DISTRICT, AND THE PECK  
4 PLAINTIFFS FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT" dated December  
5 11, 2002 (hereinafter "the Peck Settlement"), judgment by way of  
6 compromise and settlement is entered in favor of the Peck Plaintiffs  
7 and against the United States, contingent upon the appropriation of  
8 funds by Congress that are available for this purpose; and to be  
9 paid in installments, according to the schedule provided below, on  
10 the applicable Transfer Closing dates provided in Paragraph 5.d of  
11 the Peck Settlement, and subject to Paragraph 5.h.(2) of the Peck  
12 Settlement:

13 (a) Five Million Dollars (\$5,000,000) shall be paid at  
14 the First Transfer Closing;

15 (b) In the event that payment by the United States to the  
16 Peck Plaintiffs is made under this Consent Judgment during  
17 federal fiscal year 2003, in an amount which, in combination  
18 with the payments made earlier under this Consent Judgment, is  
19 not less than Ninety-nine Million, Nine Hundred Thousand  
20 Dollars (\$99,900,000.00), then the Parties agree that such  
21 payment shall fully satisfy this Consent Judgment and fully  
22 discharge the Federal Defendants' obligations under this  
23 Consent Judgment;

24 (c) In the event that payment is not made as provided in  
25 Paragraph 1(b), then a payment shall be made at the Second  
26 Transfer Closing in an amount which, in combination with the

1 payments made earlier under this Consent Judgment, equals  
2 Thirty-nine Million Dollars (\$39,000,000.00);

3 (d) In the event that payment by the United States to the  
4 Peck Plaintiffs is made under this Consent Judgment during  
5 federal fiscal year 2004, in an amount which, in combination  
6 with the payments made earlier under this Consent Judgment, is  
7 not less than One Hundred Three Million, Four Hundred Fifty  
8 Thousand Dollars (\$103,450,000.00), then the Parties agree that  
9 such payment shall fully satisfy this Consent Judgment and  
10 fully discharge the Federal Defendants' obligations under this  
11 Consent Judgment;

12 (e) In the event that payment is not made as provided in  
13 Paragraph 1(b) or 1(d), then:

14 (i) a payment shall be made at the Third Transfer  
15 Closing in an amount which, in combination with the  
16 payments made earlier under this Consent Judgment, equals  
17 Seventy-three Million Dollars (\$73,000,000.00); and

18 (ii) a payment shall be made at the Fourth Transfer  
19 Closing in an amount which, in combination with the  
20 payments made earlier under this Consent Judgment, equals  
21 One Hundred Seven Million dollars (\$107,000,000.00);

22 2. Federal Defendants shall use their best efforts to secure  
23 the appropriation of funds by Congress to satisfy this Consent  
24 Judgment. Federal Defendants acknowledge that funds are presently  
25 available to make the payment provided under Paragraph 1(a).  
26 Nothing in this Consent Judgment, or in the Peck Settlement pursuant

1 to which it is entered, shall be deemed to limit the authority of  
2 the President to make recommendations to Congress on any particular  
3 piece of legislation;

4 3. The entry and satisfaction of this Consent Judgment shall  
5 constitute a full, complete and final resolution of any and all  
6 legal and equitable claims, demands, rights or causes of action for  
7 damages or other monetary relief that either have been asserted by  
8 the Peck Plaintiffs against the Federal Defendants in the actions  
9 identified in the Peck Settlement as "the Lawsuit" and/or "the Court  
10 of Federal Claims Lawsuit," or that might have been asserted by the  
11 Peck Plaintiffs against the Federal Defendants arising out of the  
12 facts alleged in, or relating to the subject matter of, the Lawsuit  
13 or the Court of Federal Claims Lawsuit.

14 4. Each Party shall bear its own costs and fees, except that  
15 the payments provided in Paragraph 1, and payments made previously  
16 by the United States to the Peck Plaintiffs in this litigation,  
17 provide full payment by the United States in compromise of the Peck  
18 Plaintiffs' claims for attorney fees and costs.

19 This Court has jurisdiction for the purpose of enforcing this  
20 Consent Judgment.

21 DATE:

22  
23  
24 

---

United States District Judge

EXHIBIT G  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

DANIEL J. O'HANLON, State Bar No. 122380  
EDMUND GEE, State Bar No. 178627  
ANDREW P. TAURIANEN, State Bar No. 214837  
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation  
400 Capitol Mall, 27th Floor  
Sacramento, CA 95814-4416  
Telephone: (916) 321-4500  
Facsimile: (916) 321-4555

JAMES E. THOMPSON, State Bar No. 041598  
BEST BEST & KRIEGER LLP  
400 Capitol Mall, Suite 1650  
Sacramento, CA 95814  
Telephone: (916) 325-4000  
Facsimile: (916) 325-4010

Attorneys for Defendant  
Westlands Water District

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SUMNER PECK RANCH, INC., a  
California Corporation, et al.,

Plaintiffs,

v.

BUREAU OF RECLAMATION, et al.,

Defendants.

CASE NO. CV-F-91-048 OWW

**STIPULATION OF VOLUNTARY  
DISMISSAL UPON SETTLEMENT**

WHEREAS, Plaintiffs SUMNER PECK RANCH ET AL. ("Peck Plaintiffs"),<sup>1</sup>  
Defendants WESTLANDS WATER DISTRICT ("Westlands"), and the UNITED STATES OF

---

<sup>1</sup> The Peck Plaintiffs comprise the persons and/or entities identified in **Schedule 1**, attached hereto.

1 AMERICA, DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION ("United  
2 States") have entered into an "Agreement Among the United States, Westlands Water District, and  
3 the Peck Plaintiffs for Settlement of the Sumner Peck Lawsuit" executed on December \_\_, 2002 (the  
4 "Settlement Agreement"); and

5 WHEREAS, the Settlement Agreement provides that upon entry by the District Court  
6 of the Consent Judgment provided in Paragraph 6.A of the Settlement Agreement,] the Peck  
7 Plaintiffs, Westlands, and the United States shall execute and file in the District Court a Stipulation  
8 of Voluntary Dismissal Upon Settlement;

9 IT IS HEREBY STIPULATED by and between the Peck Plaintiffs, Westlands, and the  
10 United States that, pursuant to the Settlement Agreement, the following particular pending claims,  
11 counterclaims, and cross-claims in this action shall be, and hereby are, DISMISSED in their entirety,  
12 pursuant Rules 41(a) and 41(c) of the Federal Rules of Civil Procedure, as follows:

13 1. Except as provided in Paragraph 6.A of the Settlement Agreement, all claims  
14 made by the Peck Plaintiffs against the United States are DISMISSED WITH PREJUDICE.

15 2. All claims made by the Peck Plaintiffs against Westlands are DISMISSED  
16 WITH PREJUDICE.

17 3. The counterclaims made by Westlands against the Peck Plaintiffs are  
18 DISMISSED WITH PREJUDICE.

19 4. The cross-claims made by Westlands against the United States — to the extent  
20 that the cross-claims relate to the claims asserted by the plaintiffs in this action and either to the lands  
21 described in Exhibits A1 through A4 of the Settlement Agreement and/or to the lands described in  
22 Exhibit A of the settlement filed with the District Court on September 17, 2002 ("the Britz  
23 Settlement"), including the First Claim for Relief in Westlands' Cross-claim — are DISMISSED  
24 WITH PREJUDICE.

1                   5. Westlands' cross-claims, including the Second, Third, Fourth, Fifth and Sixth  
2 Claims for Relief in its Cross-claim, to the extent such cross-claims do not relate to the claims  
3 asserted by the plaintiffs in this action and either to the lands described in Exhibits A1 through A4 of  
4 the Settlement Agreement, or to the lands described in Exhibit A of the Britz Settlement, are  
5 DISMISSED WITHOUT PREJUDICE.

6                   IT IS FURTHER STIPULATED that, except as set forth in the Settlement Agreement,  
7 each party shall bear its own attorneys' fees and costs related to the claims, cross-claims and/or  
8 counterclaims dismissed hereby.  
9

10 Dated: December \_\_, 2002

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Professional Corporation

12 By \_\_\_\_\_

Daniel J. O'Hanlon  
Attorney for Westlands Water District

14 Dated: \_\_\_\_\_

SMILAND & KHACHIGIAN

16 By \_\_\_\_\_

Theodore A. Chester, Jr.  
Attorney for Peck Plaintiffs

18 Dated: \_\_\_\_\_

THOMAS L. SANSONETTI  
Assistant Attorney General  
Environmental and Natural Resources Division

22 By \_\_\_\_\_

Maria A. Iizuka  
Environmental and Natural Resources Division  
Attorneys for Federal Defendants

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Dated: \_\_\_\_\_

JOHN K. VINCENT  
United States Attorney

By \_\_\_\_\_

Yoshinori H.T. Himel  
Assistant U.S. Attorney  
Attorneys for Federal Defendants



EXHIBIT G1  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

DANIEL J. O'HANLON, State Bar No. 122380  
EDMUND GEE, State Bar No. 178627  
ANDREW P. TAURIANEN, State Bar No. 214837  
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
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Telephone: (916) 321-4500  
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JAMES E. THOMPSON, State Bar No. 041598  
BEST BEST & KRIEGER LLP  
400 Capitol Mall, Suite 1650  
Sacramento, CA 95814  
Telephone: (916) 325-4000  
Facsimile: (916) 325-4010

Attorneys for Defendant  
Westlands Water District

UNITED STATES COURT OF FEDERAL CLAIMS

SUMNER PECK RANCH, INC., a  
California Corporation, et al.,

Plaintiffs,

v.

BUREAU OF RECLAMATION, et al.,

Defendants.

CASE NO. \_\_\_\_\_

**STIPULATION OF VOLUNTARY  
DISMISSAL UPON SETTLEMENT**

WHEREAS in the lawsuit entitled Sumner Peck Ranch, Inc., et al. v. Bureau of Reclamation, et al., Civ. No. F-91-048 OWW, in the United States District Court for the Eastern District of California (the "District Court lawsuit"), Plaintiffs SUMNER PECK RANCH ET AL. ("Peck Plaintiffs"),<sup>1</sup> Defendants WESTLANDS WATER DISTRICT ("Westlands"), and the UNITED STATES OF AMERICA, DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION ("United

<sup>1</sup> The Peck Plaintiffs comprise the persons and/or entities identified in **Schedule 1**, attached hereto.

1 States") have entered into an "Agreement Among the United States, Westlands Water District, and  
2 the Peck Plaintiffs for Settlement of the Sumner Peck Lawsuit" executed on December \_\_, 2002 (the  
3 "Settlement Agreement");

4 WHEREAS, pursuant to the order entered in the District Court lawsuit dated October 24, 2002,  
5 certain claims of the Peck Plaintiffs against the United States have been transferred to the United  
6 States Court of Federal Claims; and

7  
8 WHEREAS, the Settlement Agreement provides that upon entry by the District Court on the  
9 Consent Judgment provided in Paragraph 6.A of the Settlement Agreement, the Peck Plaintiffs and  
10 the United States shall execute and file in the United States Court of Federal Claims a Stipulation of  
11 Voluntary Dismissal Upon Settlement with regard to the Peck Plaintiffs' claims against the United  
12 States;

13 IT IS HEREBY STIPULATED by and between the Peck Plaintiffs and the United States that,  
14 pursuant to the Settlement Agreement, except as provided in Paragraph 6.A of the Settlement  
15 Agreement, the claims made by the Peck Plaintiffs against the United States in this action shall be,  
16 and hereby are, DISMISSED in their entirety WITH PREJUDICE, pursuant Rules 41(a) and 41(c) of  
17 the Rules of the Court of Federal Claims.

18  
19 IT IS FURTHER STIPULATED that except as set forth in the Settlement Agreement] each  
20 party agrees to bear its own attorneys' fees and costs related to the claims dismissed hereby.

21  
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23  
24 Dated: \_\_\_\_\_

SMILAND & KHACHIGIAN

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By \_\_\_\_\_  
Theodore A. Chester, Jr.  
Attorney for Peck Plaintiffs

Dated: \_\_\_\_\_

THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources Division

By \_\_\_\_\_  
Maria A. Iizuka  
Environment and Natural Resources Division  
Attorneys for Federal Defendants

Dated: \_\_\_\_\_

JOHN K. VINCENT  
United States Attorney

By \_\_\_\_\_  
Yoshinori H.T. Himel  
Assistant U.S. Attorney  
Attorneys for Federal Defendants

EXHIBIT H  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

RECORDING REQUESTED BY

WESTLANDS WATER DISTRICT

U.S. BUREAU OF RECLAMATION

WHEN RECORDED MAIL TO

NAME Westlands Water District  
ADDRESS 3130 N. Fresno Street  
CITY Fresno  
STATE & ZIP CA 93703

NAME U.S. Bureau of Reclamation  
ADDRESS 1243 "N" Street  
CITY Fresno  
STATE & ZIP CA 93721-1813

---

**DRAINAGE EASEMENT**

---

APN:

X [Describe X] ("X" and/or "Owners"), are the current owners of the farmlands located in Fresno County, California, described in Exhibit "1" attached hereto ("the Covered Lands"). Owners execute this Drainage Easement ("Easement") pursuant to the terms and conditions contained in the Settlement Agreement dated December 11, 2002 ("Settlement"), in the lawsuit entitled Sumner Peck Ranch, Inc., et al. vs. United States of America, et al., CIV. No. F-91-048 OWW, in the United States District Court for the Eastern District of California, Fresno Division ("the Lawsuit"), and related proceedings in the United States Court of Federal Claims ("the Court of Federal Claims Lawsuit"), entered into by the following parties: **SUMNER PECK RANCH, INC., ET AL.** ("the Peck Plaintiffs"), the **UNITED STATES OF AMERICA** ("the United States"), and **WESTLANDS WATER DISTRICT** ("Westlands").

Pursuant to this Easement and the Settlement, Owners hereby grant to Westlands and the United States through the Bureau of Reclamation of the United States Department of the Interior, their heirs, successors and assigns, the exclusive, permanent right to maintain, cause, permit, create, or allow the presence of subsurface water underlying the Covered Lands, and the permanent right, in their sole discretion, to provide drainage or not provide drainage of the subsurface water underlying the Covered Lands.

Pursuant to this Easement and the Settlement, Owners hereby release, waive, and abandon any and all claims, demands, rights, or causes of action which they have asserted, or could have asserted, against the United States and/or Westlands in the Lawsuit or the Court of Federal Claims Lawsuit arising out of facts alleged in, or relating to the subject matter of, the Lawsuit or the Court of Federal Claims Lawsuit.

**SIGNATURES ON FOLLOWING PAGES**

Dated: \_\_\_\_\_, 2002

**OWNERS:**

**X**

By: \_\_\_\_\_  
M/M X

**EXHIBIT "1"**  
[Description of Covered Lands]



EXHIBIT X  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

1 THOMAS L. SANSONETTI  
Assistant Attorney General  
2 Environment and Natural Resources Division  
United States Department of Justice  
3  
4 MARIA A. IIZUKA (CA 146224; D.C. 952069; MD)  
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8 JOHN K. VINCENT  
United States Attorney  
YOSHINORI H.T. HIMEL (CA 66194)  
Assistant United States Attorney  
9 501 "I" Street, Suite 10-100  
Sacramento, CA 95814  
10 (916) 554-2760

11 Attorneys for Federal Defendants

12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE EASTERN DISTRICT OF CALIFORNIA

14		)	
15	SUMNER PECK RANCH, INC.,	)	CV-F-91-048-OWW
16	et al.,	)	
17	Plaintiffs,	)	JOINT MOTION FOR ENTRY
18		)	OF CONSENT ORDER PURSUANT TO
19	v.	)	SETTLEMENT
20	BUREAU OF RECLAMATION, et al.,	)	
21	Defendants.	)	

22 NOTICE

23 PLEASE TAKE NOTICE that defendants, the United States of  
24 America, Department of the Interior, Bureau of Reclamation ("the  
25 United States" or "Federal Defendants"), and the defendant  
26 Westlands Water District ("Westlands") (collectively "the joint  
27 movants"), without opposition by the plaintiffs - the persons and  
28 entities listed on Schedule 1 attached hereto ("the Peck  
Plaintiffs"); and David Britz, Marilyn Britz, Martin Britz, Linda

EXHIBIT X

1 Glassman, Robert Glassman, Ted R. Frame as Trustee of the Jennifer  
2 Britz Trust, Ted R. Frame as Trustee of the Jaime Britz Trust, Ted  
3 R. Frame as Trustee of the Rodney Glassman Trust, Ted R. Frame as  
4 Trustee of the Jeremy Glassman Trust, Ted R. Frame as Trustee of  
5 the Carson Michael Britz Trust, Ted R. Frame as Trustee of the  
6 Brett Bricker Britz Trust, Britz, Inc., a California corporation,  
7 and Britz Investment Co., Inc., as Assignee of Ernest Carvalho,  
8 Anna M. Carvalho, Kenneth J. Carvalho, and Karen Carvalho ("the  
9 Britz Plaintiffs") - hereby jointly move the Court as herein set  
10 forth.

11  
12 MOTION

13 For the reasons set forth herein, defendant Westlands and the  
14 Federal Defendants, without opposition by the Peck Plaintiffs or  
15 the Britz Plaintiffs, hereby jointly move this Court for the entry  
16 of a consent order on the terms and conditions set forth in the  
17 proposed Consent Order Pursuant to Settlement Agreement lodged  
18 with this motion. The proposed consent order relates to the  
19 settlement agreements reached between and among the Peck  
20 Plaintiffs, the Britz Plaintiffs, the Federal Defendants, and  
21 defendant Westlands, and to this Court's prior partial judgment and  
22 orders regarding drainage obligations.

23 This Court entered its Partial Judgment on Findings of Fact  
24 and Conclusions of Law Re: Statutory Duty on March 12, 1995 (the  
25 "Partial Judgment"). On February 4, 2000, the Ninth Circuit Court  
26 of Appeals rendered a decision on appeal of the Partial Judgment.  
27 Following the appeal to the Ninth Circuit Court of Appeals, and a  
28 remand to this Court, on December 18, 2000, the Court entered its

1 Order Modifying Partial Judgment on Findings of Fact and  
2 Conclusions of Law Re: Statutory Duty to Conform to Ninth Circuit  
3 Opinion, and subsequently entered further orders concerning the  
4 time for the federal defendants to file their Plan of Action with  
5 the Court (the "December 18, 2000 Order").

6 Subsequently, on September 3, 2002 , the Britz Plaintiffs,  
7 Federal Defendants and Westlands (collectively, "the parties to the  
8 Britz Settlement") entered into the "AGREEMENT AMONG THE UNITED  
9 STATES, WESTLANDS WATER DISTRICT, AND THE BRITZ PLAINTIFFS FOR  
10 SETTLEMENT OF THE SUMNER PECK LAWSUIT," (hereinafter "the Britz  
11 Settlement"), for the purpose of partially compromising and  
12 partially settling this litigation, and resolving the disputes that  
13 have arisen between and among them without further litigation and  
14 without admitting or conceding liability. The Britz Settlement  
15 relates to approximately 3,006 acres of land, among other things.  
16 This Court on September 30, 2002 entered a partial final consent  
17 judgment pursuant to the Britz Settlement.

18 Subsequently, on December 11, 2002, the Peck Plaintiffs,  
19 Federal Defendants and Westlands (collectively, "the parties to the  
20 Peck Settlement") entered into the "AGREEMENT AMONG THE UNITED  
21 STATES, WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS FOR  
22 SETTLEMENT OF THE SUMNER PECK LAWSUIT" (hereinafter "the Peck  
23 Settlement"), for the purpose of compromising and settling this  
24 litigation, and resolving the disputes that have arisen between and  
25 among them without further litigation and without admitting or  
26 conceding liability. The Peck Settlement relates to approximately  
27 34,100 acres of land, among other things.

28 Under the terms of these settlement agreements, as more

1 specifically set forth therein, each of the plaintiffs and  
2 Westlands Water District waives and releases the United States from  
3 any obligation to them, to provide drainage to these lands.  
4 Further, under the terms of the settlement agreements,  
5 Nonirrigation Covenants may be recorded, and drainage easements  
6 will be recorded, on these lands.

7 The joint movants agree that nothing contained in the Court's  
8 Partial Judgment, as modified by the December 18, 2000 Order,  
9 should be deemed to impose any requirements that are inconsistent  
10 with the Britz Settlement or the Peck Settlement with respect to  
11 the lands that are covered by those settlement agreements, or to  
12 impose any requirements that are contrary to or would prevent  
13 implementation of Britz Settlement or the Peck Settlement. Further,  
14 the joint movants agree that nothing in the Court's Partial  
15 Judgment, as modified by the December 18, 2000 Order, should be  
16 deemed to divest the Secretary of the Interior, the United States  
17 Department of the Interior, or the United States Bureau of  
18 Reclamation of their discretion to choose the means of providing  
19 drainage to the San Luis Unit, including their discretion to amend  
20 or modify the Plan of Action filed with the Court on April 18,  
21 2001.

22 Accordingly, the joint movants respectfully request the Court  
23 to enter the consent order.

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DATE:

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Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

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DATE:

KRONICK, MOSKOVITZ, TIEDEMAN & GIRARD

DANIEL J. O'HANLON  
EDMUND GEE

By \_\_\_\_\_

Attorneys for Westlands Water District

EXHIBIT Y  
TO  
AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT

1  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF CALIFORNIA  
4

5 SUMNER PECK RANCH, INC., a  
6 California Corporation, et al.,

7 Plaintiffs,

8 v.

9 BUREAU OF RECLAMATION, et al.,

10 Defendants.  
11

CASE NO. CV-F-91-048 OWW

**CONSENT ORDER PURSUANT TO  
SETTLEMENT AGREEMENT**

12 In connection with an agreed settlement of *Sumner Peck Ranch, Inc. v. Bureau of*  
13 *Reclamation*, No. CV-F-91-048 OWW, the federal defendants and defendant Westlands Water  
14 District, without opposition by the Peck Plaintiffs or the Britz Plaintiffs, have moved the Court for an  
15 order relating to their settlement of claims, and this Court's prior partial judgment and orders  
16 regarding drainage obligations.  
17

18 This Court entered its Partial Judgment on Findings of Fact and Conclusions of Law Re:  
19 Statutory Duty on March 12, 1995 (the "Partial Judgment"). On February 4, 2000, the Ninth Circuit  
20 Court of Appeals rendered a decision on appeal of the Partial Judgment. Following the appeal to the  
21 Ninth Circuit Court of Appeals, and a remand to this Court, on December 18, 2000, the Court entered  
22 its Order Modifying Partial Judgment on Findings of Fact and Conclusions of Law Re: Statutory Duty  
23 to Conform to Ninth Circuit Opinion, and subsequently entered further orders concerning the time for  
24 the federal defendants to file their Plan of Action with the Court (the "December 18, 2000 Order").

25 The terms for settlement are memorialized in two documents. These are: the "Agreement  
26 Among the United States, Westlands Water District and the Britz Plaintiffs for Settlement of the *Sumner*



1  
2 *Peck* Lawsuit,” dated September 3, 2002, relating to approximately 3,006 acres of land (the “Britz  
3 Settlement”); and a second agreement titled “Agreement Among the United States, Westlands Water  
4 District and the Peck Plaintiffs for Settlement of the *Sumner Peck* Lawsuit,” dated December 11, 2002,  
5 relating to approximately 34,100 acres of land (the “Peck Settlement”). Under the terms of these  
6 settlement agreements, as more specifically set forth therein, each of the Plaintiffs and Westlands Water  
7 District waives and releases the United States from any obligation to provide drainage to these lands.  
8 Further, under the terms of the settlement agreements, Nonirrigation Covenants may be recorded, and  
9 drainage easements will be recorded, on these lands.

10 GOOD CAUSE APPEARING THEREFOR, IT IS HEREBY ORDERED:

11 1. Nothing contained in the Court’s Partial Judgment, as modified by the December 18,  
12 2000 Order, shall be deemed to impose any requirements that are inconsistent with the Britz Settlement  
13 or the Peck Settlement with respect to the lands that are covered by those settlement agreements, or that  
14 are contrary to or would prevent implementation of Britz Settlement or the Peck Settlement.

15 2. Nothing in the Court’s Partial Judgment, as modified by the December 18, 2000  
16 Order, shall be deemed to divest the Secretary of the Interior, the United States Department of the  
17 Interior, or the United States Bureau of Reclamation of their discretion to choose the means of providing  
18 drainage to the San Luis Unit, including their discretion to amend or modify the Plan of Action filed with  
19 the Court on April 18, 2001.

20 Dated: December \_\_\_, 2002

21  
22  
23 \_\_\_\_\_  
24 Oliver W. Wanger  
25 United States District Judge  
26

1 PROOF OF SERVICE

2 STATE OF CALIFORNIA )  
3 COUNTY OF LOS ANGELES )ss

4 I, Cheryl A. Madaris, I am employed in the County of Los Angeles, State of California. I am  
5 over the age of 18 years and not a party to the within action. My business address is Smiland &  
Khachigian, 601 W. Fifth Street, Seventh Floor, Los Angeles, California 90071.

6 On **December 11, 2002**, I served the foregoing document described as: **NOTICE OF**  
7 **SETTLEMENT AGREEMENT**, on all parties in said action as follows:

8 [ ] **BY U.S. MAIL:** On the above date, in Los Angeles, California, the document was placed in  
an envelope addressed as follows:

9 SEE ATTACHED MAILING LIST

10 The envelope was sealed and placed for collection and mailing following ordinary business  
11 practices. I am readily familiar with the business' practice for collection and processing of  
12 correspondence for mailing with the United States Postal Service. The correspondence  
13 would be deposited with the United States Postal Service that same day in the ordinary  
course of business with postage thereon fully prepaid. I am aware that on motion of party  
served, service is presumed invalid if postal cancellation date or postage meter date is more  
than one (1) day *after* date of deposit for mailing in affidavit.

14 [ ] **BY FACSIMILE:** On that date, at approximately 3:00 p.m., the document was transmitted  
15 by facsimile transmission from sending facsimile machine telephone number (213) 891-1414  
16 to the addressees shown below at their respective facsimile telephone numbers. A  
transmission report was properly issued by the transmitting facsimile machine and reported  
the transmission as complete and without error. A copy of the transmission report is attached  
to this proof of service. [C.R.C. rule 2008(e)]

17 [ **XX** ] **BY EXPRESS SERVICE CARRIER:** On that date, the document was placed in an  
18 envelope designated by Federal Express with delivery fees provided for, addressed as  
19 follows:

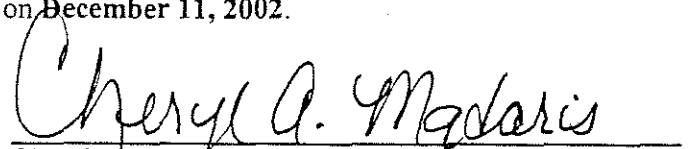
20 The envelope was sealed and marked for overnight delivery and:

[ **X** ] deposited in a box regularly maintained by Federal Express..

[ ] delivered to an authorized courier authorized by Federal Express to receive documents.  
[CCP § 1013(c)]

22 [ ] (FEDERAL) I declare that I am employed in the office of a member of the bar of this Court at  
23 whose direction the service was made.

24 Executed at Los Angeles, California on **December 11, 2002**.

25   
26 Cheryl A. Madaris  
27  
28

**SERVICE LIST**

Sumner Peck Ranch, vs. Bureau of Reclamation, et al.

Case No. CV-F-91-048 OWW

<p>Daniel J. O'Hanlon, Esq. <b>KRONICK, MOSKOVITZ, TIEDEMAN &amp; GIRARD</b> 400 Capitol Mall, 27<sup>th</sup> Floor Sacramento, CA 95814 Telephone: (916) 321-4500 Facsimile: (916) 321-4555</p>	<p>Maria A. Iizuka, Esq. Stephen M. Macfarlane, Esq. <b>U.S. DEPARTMENT OF JUSTICE</b> Environment and Natural Resource Division 501 "I" Street, Suite 9-700 Sacramento, CA 95814 Telephone: (916) 930-2202 Facsimile: (916) 930-2210</p>
<p>Yoshinori H. T. Himel, Esq. <b>U.S. DEPARTMENT OF JUSTICE</b> United States Attorney Eastern District of California 501 I Street, Suite 10-100 Sacramento, CA 95814 Telephone: (916) 554-2760 Facsimile: (916) 554-2900</p>	<p>Keith E. Saxe, Esq. Assistant Chief <b>U.S. DEPARTMENT OF JUSTICE</b> Environment &amp; Natural Resource Division 601 "D" Street, N.W., Room 3544 Washington, D.C. 20004 Telephone: (202) 305-0461 Facsimile: (202) 305-0506</p>
<p>John K. Vincent, Esq. <b>U.S. DEPARTMENT OF JUSTICE</b> United States Attorney Eastern District of California 501 I Street, Suite 10-100 Sacramento, CA 95814 Facsimile: (916) 554-2900</p>	<p>James E. Thompson, Esq. <b>BEST BEST KRIEGER LLP</b> 400 Capitol Mall Suite 1650 Sacramento, CA 95814 Telephone: (916) 325-4000 Facsimile: (916) 325-4010</p>
<p>Laurens H. Silver, Esq. <b>California Environmental Law Project</b> 302 Sycamore Street Mill Valley, CA 94941 Telephone: (415) 383-5688 Facsimile: (415) 383-7995  <b>COURTESY COPY BY FEDERAL EXPRESS</b></p>	<p>Michael V. Sexton, Esq. <b>MINASIAN, SPRUANCE, BABER, MEITH, SOARES &amp; SEXTON</b> 1681 Bird Street P. O. Box 1679 Oroville, CA 95965 Telephone: (530) 533-2885 Facsimile: (530) 533-0197  <b>COURTESY COPY BY FEDERAL EXPRESS</b></p>
<p>Ted R. Frame <b>FRAME, MATSUMOTO &amp; ATKINS</b> 201 Washington Street Post Office Box 895 Coalinga, California 93210 Telephone: (559) 935-1552 Facsimile: (559) 935-1555  <b>COURTESY COPY BY FEDERAL EXPRESS</b></p>	

## OPTION AGREEMENT

This Option Agreement (this "Option Agreement") is dated as of February 18, 2010, for reference purposes only, and is made by and between WESTLANDS WATER DISTRICT, a California water district, ("Seller"), and NORTH STAR SOLAR LLC, a Delaware limited liability company ("Buyer").

### ARTICLE I

#### DEFINITIONS

For purposes of this Option Agreement, the following terms shall have the following meanings:

1.1 Property: The term "Property" shall mean the following:

A. that certain land consisting of approximately 634.13 acres, located in County of Fresno, assessor parcel numbers 019-040-30, 019-040-05 and 019-050-61, as more particularly described in attached Exhibit A (the "Land");

B. all of Seller's right, title and interest, if any, in and to all improvements and fixtures located on the Land, including, without limitation, all landscaping, utilities equipment and infrastructure, drainage improvements, dikes, berms and dams, but excluding (i) any such items owned by public or private utilities other than Seller, and (ii) items owned by Seller in the nature of public utility facilities (collectively, the "Improvements");

C. all rights, privileges and easements appurtenant to the Land, including, without limitation, all development rights, air rights, and sun rights relating to the Land and any rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land and Improvements and all of Seller's right, title and interest, if any, in and to all roads and alleys adjoining or servicing the Land (collectively, the "Appurtenances"; the Land, Improvements and Appurtenances are referred to herein collectively as the "Real Property"); and

D. all of Seller's right, title and interest, if any, in and to any intangible personal property now or hereafter owned by Seller and used in the ownership, use or operation of the Real Property, including, without limitation, all utility contracts or other agreements or rights relating to the ownership, use and operation of the Real Property, all reports, warranties, indemnities, permits, plans, insurance proceeds and condemnation awards and all other rights, benefits or approvals issued or available to Seller by any federal, state or local municipal authorities relating to the development, use, maintenance, ownership or operation of the Real Property (collectively, the "Intangible Property").

1.2 Rights Excluded: Notwithstanding anything to the contrary in this Option Agreement, the parties agree that the Property shall not include and Seller shall retain all rights to (i) all water deliveries and allocation from Seller appurtenant to the Land by virtue of its location within Seller's service area, except as otherwise provided in this Option Agreement and (ii) all minerals, oil, gas and other hydrocarbon substances on and under the Land, to the extent owned by Seller; provided, however, that Seller shall have no rights to use or access the surface of the Land to remove, exploit or otherwise benefit from such minerals, oil, gas and other hydrocarbon substances after Buyer acquires the Property.

1.3 Effective Date of this Option: This Option Agreement shall be effective on, and the term "Effective Date" shall mean, the date the last designated signatory to this Option Agreement shall have executed this Option Agreement.

## ARTICLE 2

### OPTION TERMS

2.1 Grant of Option: Seller hereby grants to Buyer an option to purchase (the "Option") the Property. This Option is on the terms and conditions set forth in this Option Agreement. The purchase and sale of the Property on exercise of this Option shall be on substantially the terms and conditions set forth in the Purchase and Sale Agreement attached as Exhibit C to this Option Agreement (the "Purchase Agreement").

2.2 Term of Option:

A. Basic Term: The initial term of this Option shall commence on the Effective Date, and shall terminate at 5:00 p.m. (California time) on April 30, 2010 (the "Initial Option Period," and, as extended pursuant to this Option Agreement, the "Option Term"), unless sooner terminated as provided herein. As long as this Option Agreement remains in effect, Buyer may extend the term of the Option for the periods described in Section 2.5 below by timely payment of the amounts described in that section.

B. Automatic Termination: This Option Agreement shall automatically and immediately terminate without notice, and the parties shall thereafter have no further rights, claims or obligations hereunder, (i) if Buyer fails to timely extend the Option Term as provided in Section 2.5 or timely exercise this Option in accordance with the provisions of Section 2.6 or (ii) if, prior to any exercise of the Option to purchase, Buyer notifies Seller of Buyer's election to terminate this Option Agreement.

2.3 Consideration: Within three (3) business days after the Effective Date, Buyer shall deposit in escrow with Chicago Title Company at 455 Market Street, Suite 2100, San Francisco, California 94105 (the "Title Company"), the sum of Thirty Thousand Dollars (\$30,000) (the "Initial Deposit"). The Title Company shall invest the Deposits in an interest-bearing account acceptable to Buyer and interest accruing thereon shall be held for the account of Buyer; provided, however, that, so long as Seller is not in default under this Option Agreement and subject to Section 3.2 and Section 3.6 hereof, (i) the Initial Deposit shall be disbursed by the Title Company to Seller upon the expiration of the Initial Option Period unless Buyer has exercised its termination right pursuant to Section 3.2 and (ii) each Extension Deposit shall be disbursed to by the Title Company to Seller upon expiration of the Extension Period to which it pertains. The term "Deposits" shall refer to the Initial Deposit and all interest thereon, and, to the extent delivered by Buyer pursuant to Section 2.5 hereof, any Extension Deposit, and all interest thereon. Notwithstanding the foregoing, the Extension Deposit for the period January 1, 2012 – December 31, 2012 shall be disbursed by Title Company to Seller immediately following Buyer's delivery of that Extension Deposit to Escrow.

2.4 Application of Option Consideration:

A. If this Option is exercised in accordance with its terms by Buyer and the Closing (as defined in the Purchase Agreement) occurs in accordance with the Purchase Agreement, the Initial Deposit plus interest accrued thereon, together with all Extension Deposits actually delivered by Buyer, plus all interest accrued thereon prior to the distribution of the Deposits to Seller, shall be credited against the Purchase Price.

B. If this Option Agreement terminates for any reason other than Seller's material default, Seller shall retain, and Buyer shall not have any claim whatsoever to, all Deposits previously paid by Buyer to Seller with respect to this Option Agreement; provided, however, that Buyer shall have the right to

receive a return of the Deposits upon any termination of this Option Agreement pursuant to Section 3.2 or Section 3.6 below.

2.5 Extension of Option Term. Buyer shall have the right to extend the Option Term seven (7) separate times for the following periods (the "Extension Period(s)");

Extension Option	Extension Period
1	May 1, 2010 –September 30, 2010
2	October 1, 2010 – December 31, 2010
3	January 1, 2011 – March 31, 2011
4	April 1, 2011 – June 30, 2011
5	July 1, 2011 – September 30, 2011
6	October 1, 2011 -- December 31, 2011
7	January 1, 2012 – December 31, 2012

Buyer may exercise each such extension option prior to the commencement of the Extension Period to which such extension option pertains by: (a) giving written notice of such extension to Seller and the Title Company (which notice shall specify the date to which the Option Term has been extended), and (b) depositing with the Title Company (i) the sum of Thirty Thousand Dollars (\$30,000.00) for each of the first six (6) extensions so exercised and (ii) the sum of One Million Dollars (\$1,000,000) for the seventh (7<sup>th</sup>) extension, if exercised (collectively, together with all interest thereon, the "Extension Deposit(s)"). The Extension Deposits, to the extent actually paid, shall be credited against the Purchase Price.

2.6 Exercise of Option: At any time prior to expiration of the Option Term, Buyer may exercise the Option by delivery to Seller of a written notice (delivered in accordance with the provisions of Section 5.1) of Buyer's election to exercise its Option (the "Exercise Notice"). Buyer must exercise the Option as to all of the Property or not at all. No partial exercise of the Option is permitted. Within three (3) business days after exercise of the Option, the parties shall execute and deliver into escrow with the Title Company the Purchase Agreement.

### ARTICLE 3

#### OBLIGATIONS OF THE PARTIES DURING THE OPTION TERM

##### 3.1 Buyer's Right to Enter; Due Diligence:

A. Buyer and its agents, employees, representatives and contractors shall be permitted to perform due diligence with respect to the Property during the Option Term. Buyer and its agents shall have the right, upon reasonable notice to Seller, at any reasonable time, to go upon the Property to inspect, examine, survey and make test borings, soil bearing tests and any other engineering, environmental, architectural or landscaping tests, drawings, investigations or surveys that Buyer deems necessary or appropriate. Any environmental testing to be performed by or for Buyer must be conducted by consultants and/or contractors who are licensed (if applicable) in the State of California. At Buyer's election, Buyer, at

Buyer's sole cost, may obtain an ALTA survey for the Property, and shall request the Title Company to issue a Supplement (as defined below) in connection therewith. Seller, or his agent, shall have the right to observe any testing by or for Buyer, Buyer shall promptly restore the Property to the condition that it was in prior to any such activities conducted by Buyer.

B. If there is any damage to the Property as a result of the foregoing, then, Buyer, at its sole cost and expense, shall promptly remedy such damage to the satisfaction of Seller. Buyer agrees to indemnify, protect, defend and hold harmless Seller from and against all losses, liabilities, damages, costs, claims, actions, causes of action, expenses (including reasonable attorneys' fees) and liens to the extent caused in whole or part, by any of the foregoing activities conducted by or for Buyer; except with respect to any loss, cost, damage, claim or liability incurred by Seller resulting from the existence of, or the mere discovery by Buyer or its representatives of, defects or other adverse conditions at the Property and except for the negligence or willful misconduct of Seller or its agents, employees or contractors. Buyer's indemnity obligations shall survive the Closing or other termination of this Option Agreement. In connection with its due diligence activities on the Property, Buyer shall carry insurance coverage policies of general liability insurance, providing limits of not less than \$1,000,000 bodily injury and property damage per occurrence and \$2,000,000 general aggregate. Said policies shall name Seller as additional insured (with ISO CG 2010 endorsement or equivalent) and shall provide that policy will not be cancelled in coverage without thirty (30) days' written notice to Seller. Prior to execution of this Option Agreement by Seller, Buyer shall cause to be delivered to Seller a copy of the certificate of insurance reflecting all essential coverage.

C. Seller agrees to deliver to Buyer all of the Due Diligence Materials (defined below) within fifteen (15) business days after Buyer's written request. Buyer shall have the right to make such investigations, studies and tests with respect to the Property as Buyer deems necessary or appropriate to determine the feasibility of purchasing and developing the Property, including, without limitation, review and approval of the following matters: environmental reports, soils reports, insurance policies, all governmental permits and approvals relating to the Property, and other contracts or documents of significance to the Property and such other information relating to the Property that are reasonably requested by Buyer of Seller to the extent such information either is in the possession or control of Seller ("Due Diligence Materials"). If Buyer fails to purchase the Property for any reason Buyer shall return to Seller (i) all Due Diligence Materials received from Seller and any copies thereof and (ii) copies of any reports or other written materials prepared by third-parties relating to the physical or environmental condition of the Land; provided, however, that (i) Buyer shall have no obligation to provide to Seller (a) any proprietary information relating to Buyer's potential development of the Property for solar power generation, (b) any internally or externally prepared reports regarding valuation or economic performance of the Property, (c) any income tax returns or (d) any information or documentation that is privileged, subject to a confidentiality restriction or otherwise legally protected from disclosure and (ii) Buyer shall have no liability to Seller with respect to Seller's use of such reports and Seller shall indemnify, defend and hold Buyer harmless from any all losses, damages, liabilities, claims, attorneys' fees, costs and expenses arising from any claims against Buyer as a result of Seller's use of such reports.

D. Except for disclosure to Buyer's attorneys, accountants, members, partners, employees, contractors and consultants, Buyer shall not disclose any adverse conditions affecting the Property unless and until Buyer purchases the Property, unless such disclosure is required by law or in connection with Buyer's due diligence investigation or development of the Property.

### 3.2 Condition of Title.

A. Within five (5) business days following execution of this Option Agreement, Seller shall direct Title Company to deliver to Buyer (i) a current preliminary title report on the Land, issued by the

Title Company, accompanied by copies of all documents referred to in the report (collectively, the "Preliminary Report"), (ii) a copy of the most recent tax bill for the Land, including information regarding any assessments affecting the Land in Seller's possession, (iii) copies of all existing and proposed easements, covenants, restrictions, agreements or other documents which affect title to the Property and which are not disclosed by the Preliminary Report; and (iv) any survey of the Land in Seller's possession or control. Buyer shall deliver to Seller and the Title Company written notice ("Buyer's Title Notice"), within thirty (30) days after receipt of the Preliminary Report and related materials listed above, identifying what exceptions to title, if any, are objectionable to Buyer. Notwithstanding the foregoing, except as provided in Section 3.2(B) and Section 3.2(C), Seller shall have no obligation to remove any objectionable exception, including without limitation (i) any objectionable exception pertaining to the use of irrigation water on the Property or the agricultural use of the Property, including, but not limited to, prohibitions or restrictions imposed for the benefit of Seller or the United States, or (ii) exceptions (if any) pertaining to any "Williamson Act" contract; provided, however, that Buyer shall be permitted to identify such matters as objectionable exceptions in Buyer's Title Notice.

B. Seller shall have five (5) business days after receipt of Buyer's objections to give Buyer: (i) evidence satisfactory to Buyer of the removal of all objectionable exceptions from title or that said exceptions will be removed on or before the Closing Date; or (ii) notice that Seller elects not to cause such exceptions to be removed. If Seller gives Buyer notice under clause (ii), Buyer shall have five (5) days to elect to proceed with the purchase or terminate this Option Agreement. If Buyer elects to terminate within such five (5) day period, then this Option Agreement shall terminate, in which event Buyer shall pay any title and escrow fees, the Title Company or Seller, as applicable, shall immediately return the Initial Deposit and any Extension Deposits actually received, and neither party shall have any further rights or obligations hereunder.

C. A similar procedure to the foregoing shall be followed with respect to any supplement issued to the Preliminary Report (each, a "Supplement"); provided, however, that Buyer shall have ten (10) business days after receipt of any Supplement issued to deliver Buyer's Title Notice to Seller and Title Company, and if additional exceptions appear on any Supplement that result from the acts of Seller, Seller shall be obligated to remove such additional exceptions if Buyer timely objects to them.

3.3 Covenants and Warranties of Seller Concerning the Property: Seller covenants, warrants and represents to Buyer that all of the representations and warranties set forth in Article 8 of the Purchase Agreement are true and correct, or will be correct as of the Closing Date. Seller agrees to operate and maintain the Property in accordance with the provisions of Sections 13 and 14 of the Purchase Agreement, which provisions are hereby incorporated by reference into this Option Agreement.

3.4 [omitted]

3.5 Development of the Property: Seller agrees to reasonably cooperate with Buyer's proposed development of the Property as set forth in Section 16 of the Purchase Agreement, which is hereby incorporated by reference into this Option Agreement.

3.6 Risk of Loss. In the event (A) any material loss or damage occurs to the Property during the Option Term but before exercise of the Option the cost of repair of which would exceed One Hundred Thousand Dollars (\$100,000) or (B) any condemnation proceedings are commenced against all or any portion of the Property during the Option Term but before exercise of the Option, then, notwithstanding anything to the contrary in this Option Agreement, Buyer shall have the right to terminate this Option Agreement, in which event Buyer shall pay any reasonable title and escrow fees, the Title Company or Seller, as applicable, shall return the Deposits (to the extent actually paid) to Buyer, Buyer shall return to



Seller all Due Diligence Materials received from Seller and any copies thereof and neither party shall have any further rights or obligations hereunder.

#### ARTICLE 4

##### TERMS OF PURCHASE

4.1 Effect of Exercise: In the event that Buyer exercises the Option, then Buyer shall purchase and Seller shall sell the Property to Buyer upon the terms and conditions set forth in the Purchase Agreement.

4.2 Purchase Price: The purchase price of the Property is Nine Million Five Hundred Eleven Thousand Nine Hundred Fifty Dollars (\$9,511,950), subject to reduction by any credits due Buyer pursuant to the Purchase Agreement (the "Purchase Price").

#### ARTICLE 5

##### GENERAL PROVISIONS

5.1 Notices: Any notice, consent or approval required or permitted to be given under this Option Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, (ii) one (1) day after being deposited with Federal Express or another reliable overnight courier service, or (iii) on the transmitted facsimile telecopy confirmed as received, and addressed as follows:

If to Seller: Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703-6056  
Attn: Mr. Tom Glover  
Fax No.: \_\_\_\_\_

With a copy to: Sawyers & Holland, LLP  
652 West Cromwell, Suite 101  
Fresno, CA 93711  
Attn: David E. Holland, Esq.  
Fax No.: (559) 438-1781

If to Buyer: North Star Solar LLC  
701B Winslow Way East  
Bainbridge Island, WA 98110  
Attn: Dana Zentz  
Fax No.: (206) 780.3571

With a copy to: Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
Attn: James P. McCann, Esq.  
Fax No.: (650) 493-6811

or such other address as either party may from time to time specify in writing to the other.

5.2 Brokerage Commissions: Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee in connection with the sale contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes its claim shall be responsible for said commission or fee and all costs and expenses (including reasonable attorneys' fees) incurred by the other party in defending against the same. The provisions of this paragraph shall survive the expiration or termination of this Option Agreement.

5.3 Marketing. Seller agrees not to negotiate with, market or show the Property or to any other prospective purchasers during the term of this Option Agreement.

5.4 Assignment: This Option Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns. This Agreement may not be assigned, except as provided in Section 17(C) of the Purchase Agreement.

5.5 Miscellaneous. Time is of the essence of this Option Agreement. This Option Agreement shall be governed by and construed in accordance with the laws of the State of California. If any provision of this Option Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Option Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect. This Option Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof. In the event a dispute arises concerning the performance, meaning or interpretation of any provision of this Option Agreement, the defaulting party or the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and attorneys' fees. Each party hereto agrees to execute and deliver such other and further instruments and documents as may reasonably be requested by the other to carry out this Option Agreement. Each party hereto covenants to use reasonable efforts to cause satisfaction of all conditions to its obligation under this Option Agreement, and to exercise good faith in fulfilling its obligations under this Option Agreement.

5.6 Memorandum of Option Agreement and Termination of Memorandum of Option Agreement:

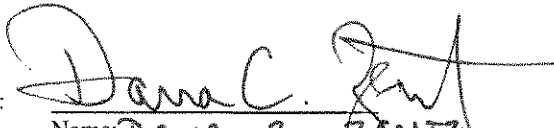
A. Within three (3) business days after the Effective Date, Seller and Buyer shall execute in recordable form a Memorandum of Option Agreement (the "Memorandum") in the form attached hereto as Exhibit B. Buyer may cause the Memorandum to be recorded in the Official Records of Fresno County, California without the need for further instruction from Seller.

B. Contemporaneously with the execution of this Option Agreement, Buyer shall execute in recordable form and deliver to the Title Company the Quitclaim Deed covering the Property in the form attached hereto as Exhibit D. Buyer hereby irrevocably instructs the Title Company to deliver the Quitclaim Deed to Seller on termination of this Option Agreement for any reason other than a material default by Seller and Buyer agrees that, upon such delivery, Seller shall have the right to cause the Title Company to record such Quitclaim Deed in the Official Records, without the need for further instruction from Buyer.

IN WITNESS WHEREOF, the parties have executed this Option Agreement as of the date first set forth above.

**Buyer:**


NORTH STAR SOLAR LLC  
a Delaware limited liability company

By:   
Name: DANA C. ZENTZ  
Title: MANAGING DIRECTOR

Date of signature: 2/18/10

**Seller:**

WESTLANDS WATER DISTRICT  
a California water district

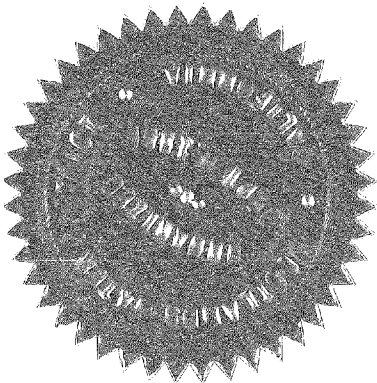
By:   
Name: DAVE CIAPPONI  
Title: ASSISTANT GENERAL MANAGER

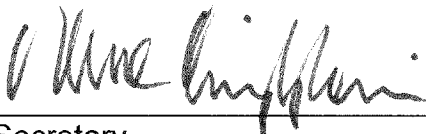
Date of signature: 2.19.10

STATE OF CALIFORNIA       )  
  )ss  
COUNTY OF FRESNO       )

I, Dave Ciapponi, do hereby certify that I am the duly appointed, qualified and acting Secretary of Westlands Water District, a public district organized under the laws of the State of California with its offices at Fresno, California; that the excerpt of the draft minutes of the regular board meeting of the Board of Directors of the Westlands Water District dated the 15<sup>th</sup> of July, 2014, are a true and correct reflection of the action taken by the Board of Directors of Westlands Water District at a meeting of said Board of Directors duly called and held on the 15<sup>th</sup> of July, 2014, at the offices of said Westlands Water District at which a quorum of said Board of Directors was present and acting; and that said Board of Directors has not taken any action subsequent to said meeting of said date that would amend or rescind said Board of Directors' action at said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and seal as Secretary of said District this 16<sup>th</sup> day of July, 2014.



  
\_\_\_\_\_  
Secretary  
Westlands Water District

DRAFT EXCERPT

MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS OF  
WESTLANDS WATER DISTRICT

July 15, 2014

A regular meeting of the Board of Directors of Westlands Water District was called to order by President Peracchi at the District's Fresno Office, 3130 N. Fresno Street, California at 1:30 p.m.

Directors present:

Don Peracchi, President  
Jim Anderson  
Frank Coelho  
Larry Enos  
Dan Errotabere  
Gary Esajian  
Todd Neves  
Alan Sano  
Sarah Woolf

Staff present:

Tom Birmingham, General Manager  
Craig Manson, General Counsel  
Dan Pope, Chief Operating Officer  
Dave Ciapponi, Secretary  
Bobbie Ormonde, Director of Finance & Administration  
Jose Gutierrez, Deputy General Manager - Resources  
Gayle Holman, Public Affairs Representative  
Steve Farmer, Supervisor of Customer Accounting  
Kiti Buelna, Junior Engineer  
Karen Clark, Executive Assistant

WATER POLICY COMMITTEE

Authorizing Execution of Purchase and Sale Agreement of District Owned Land

Mr. Birmingham reported that the Board previously approved the sale of 626.82 acres of District owned land. The parcels are identified as APN: 019-050-56ST and APN: 019-050-55ST. The escrow company required documentation that the Board had authorized the Secretary to execute the sales agreement.

## DRAFT EXCERPT

Upon motion duly made and seconded, the Board unanimously approved authorizing the Secretary to execute the Purchase and Sale Agreement for the District owned parcels; APN: 019-050-56ST, and APN: 019-050-55ST.

After the vote, the Secretary announced that the Board approved authorizing the Secretary to execute the Purchase and Sale Agreement for the District owned parcels with the vote as follows:

President Peracchi: Aye

Director Anderson: Aye

Director Coelho: Aye

Director Enos: Aye

Director Errotabere: Aye

Director Esajian: Aye

Director Neves: Aye

Director Sano: Aye

Director Woolf: Aye

---

Dave Ciapponi, Secretary

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is dated as of \_\_\_\_\_, 2014 (the "Effective Date") by and between WESTLANDS WATER DISTRICT, a California water district ("Seller"), and HA NORTHSTAR LLC, a Delaware limited liability company ("Buyer").

### RECITALS

WHEREAS, Buyer and Seller are parties to that certain Amended and Restated Option Agreement dated as of August 24, 2010 (as amended, the "Option Agreement") pursuant to which Seller granted to Buyer's predecessor in interest, North Star Solar, LLC, a Delaware limited liability company, an option to Purchase the Property (defined below) on the terms and conditions set forth in such Option Agreement; and

WHEREAS, Buyer timely and properly exercised its option under the Option Agreement.

### AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the respective agreements hereinafter set forth and for other mutual consideration the receipt and adequacy of which are hereby acknowledged, Seller and Buyer agree as follows:

#### I. Property Included in Sale.

A. Seller agrees to sell and convey to Buyer, and Buyer agrees to purchase from Seller, subject to the terms and conditions set forth herein, the following (collectively, the "Property"):

(i) that certain land consisting of approximately 626.82 acres, located in County of Fresno, assessor parcel numbers 019-050-55ST and 019-050-56ST, as more particularly described in attached Exhibit A (the "Land");

(ii) all of Seller's right, title and interest, if any, in and to all improvements and fixtures located on the Land, including, without limitation, all landscaping, utilities equipment and infrastructure, drainage improvements, dikes, berms and dams, but excluding (i) any such items owned by public or private utilities other than Seller, and (ii) items owned by Seller in the nature of public utility facilities (collectively, the "Improvements");

(iii) all rights, privileges and easements appurtenant to the Land, including, without limitation, all development rights, air rights, and sun rights relating to the Land and any rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land and Improvements and all of Seller's right, title and interest, if any, in and to all roads and alleys adjoining or servicing the Land (collectively, the "Appurtenances"; the Land, Improvements and Appurtenances are referred to herein collectively as the "Real Property"); and

(iv) all of Seller's right, title and interest, if any, in and to any intangible personal property now or hereafter owned by Seller and used in the ownership, use or operation of the Real Property, including, without limitation, all utility contracts or other agreements or rights relating to the ownership, use and operation of the Real Property, all reports, warranties, indemnities, permits, plans, insurance proceeds and condemnation awards and all other rights, benefits or approvals issued or available to Seller by any federal, state or local municipal authorities relating to the development, use, maintenance, ownership or operation of the Real Property (collectively, the "Intangible Property").

B. Rights Excluded: Notwithstanding anything to the contrary in this Agreement, the parties agree that the Property shall not include and Seller shall retain all rights to (i) all water deliveries and allocations from Seller appurtenant to the Land by virtue of its location within Seller's service area, except as otherwise provided in this Agreement and (ii) all minerals, oil, gas and other hydrocarbon substances on and under the Land,

to the extent owned by Seller; provided, however, that Seller shall have no rights to use or access the surface of the Land, or any subsurface area within 500 feet of the surface of the Land, to remove, exploit or otherwise benefit from such minerals, oil, gas and other hydrocarbon substances after the Closing.

2. Purchase Price: Deposits.

A. Purchase Price. The purchase price of the Property shall be Nine Million Five Hundred Eleven Thousand Nine Hundred Fifty Dollars (\$9,402,300), subject to reduction by any credits due Buyer hereunder (the "Purchase Price").

B. Payment of Purchase Price: Deposits. The Purchase Price shall be paid as follows:

(i) Deposits. Buyer and Seller acknowledge and agree that Buyer has deposited with Fidelity National Title at 601 California Street, Suite 1501, San Francisco, CA 94108 ("Escrow Agent") the Initial Deposit and certain Extension Deposits (as such terms are defined in the Option Agreement) and that some or all of such Deposits have been disbursed to Seller in accordance with the terms of the Option Agreement. In the event the sale of the Property as contemplated hereunder is consummated, the Initial Deposit and all Extension Deposits actually delivered by Buyer, plus all interest accrued thereon prior to the distribution thereof to Seller, shall be credited against the Purchase Price. The term "Deposits" shall refer to the Initial Deposit and all Extension Deposits actually delivered by Buyer, plus all interest accrued thereon.

(ii) Refundability of Deposits. In the event that Buyer elects to terminate this Agreement due to (a) a Seller default hereunder, (b) failure of a Buyer Condition Precedent, or (c) the occurrence of any other event which by the terms of this Agreement gives rise to a Buyer's right to terminate this Agreement and received a refund of the Deposits, then (i) the Deposits shall be refunded to Buyer by the Escrow Agent or Seller, as applicable, (ii) this Agreement shall terminate and (iii) the parties shall have no further obligation to one another with respect to this Agreement, except with respect to such provisions which by their terms survive the termination of this Agreement. Except as otherwise provided in the previous sentence, the Deposits shall be nonrefundable to Buyer.

(iii) Payment of Purchase Price Balance. The balance of the Purchase Price, as adjusted by any prorations pursuant to Section 7(F), shall be paid to Seller in immediately available funds at the closing of the purchase and sale contemplated hereunder (the "Closing").

3. Title to the Property. At the Closing, Seller shall convey to Buyer or its designee marketable and insurable fee simple title to the Real Property by duly executed and acknowledged grant deed substantially in the form of attached Exhibit B (the "Deed"). As a condition to Buyer's obligation to consummate the purchase of the Property, the Old Republic Title Company ("Title Company") shall be committed to issue to Buyer a CLTA Owner's Policy of Title Insurance in the amount of the Purchase Price (the "CLTA Policy"), containing such endorsements as Buyer shall reasonably require, insuring fee simple title to the Land in Buyer or its designee, subject only to such exceptions as Buyer shall approve pursuant to Section 3.2 of the Option Agreement and Section 4(B) below (the "Permitted Encumbrances"). The premium for the CLTA Policy shall be paid by Seller. If Buyer chooses to purchase any title policy in addition to the CLTA Policy, Buyer shall pay all costs associated with any such additional title policy.

4. Due Diligence and Title Review.

A. Buyer acknowledges and agrees that that it has performed its due diligence during the Option period, and, as of the date that it exercised the Option (i) Buyer has physically inspected the Property to Buyer's satisfaction and (ii) investigated to Buyer's satisfaction applicable operative or proposed governmental laws, regulations, ordinances and decisions (including without limitation zoning, environmental and land use laws and regulations) to which the Property is or may be or become subject.

B. Pursuant to Section 3.2 of the Option Agreement, the Title Company issued the Preliminary Report (as defined therein) and any Supplements (as defined therein) thereto. Seller hereby reaffirms its



obligations to remove those exceptions to title which Seller agreed to remove pursuant to Section 3.2 of the Option Agreement. Buyer shall have ten (10) business days after receipt of any additional Supplement issued to deliver Buyer's Title Notice to Seller and Title Company, and if additional exceptions appear on any Supplement that result from the acts of Seller, Seller shall be obligated to remove such additional exceptions if Buyer timely objects to them. Notwithstanding anything to the contrary herein, Seller shall remove and pay, at its sole cost and expense, as of the Closing, all liens evidencing any deed of trust (and related documents) or mortgages securing financing, as well as all judgment liens, mechanics' liens not caused by Buyer and liens evidencing delinquent taxes and all assessments affecting the Property.

5. Conditions to Closing.

A. Buyer Conditions. The following conditions are precedent to Buyer's obligation to purchase the Property (the "Conditions Precedent"):

(i) Seller shall be the owner of fee simple title to the Property and there shall be no lien, encumbrance or other claim affecting title to the Property other than the Permitted Encumbrances. The Title Company shall have irrevocably committed to issue to Buyer the CLTA Policy with such endorsements as Buyer may reasonably require.

(ii) All of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date.

(iii) Seller shall have performed all of its other covenants and obligations as set forth in this Agreement or the Option Agreement.

(iv) The physical condition of the Property shall be substantially the same on the day of Closing as on the date of Buyer's execution of the Option Agreement, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Section 10 below).

The Conditions Precedent contained in this Section 5(A) are intended solely for the benefit of Buyer. Subject to the provisions of Section 6 below, if any of the Conditions Precedent is not satisfied, Buyer shall have the right, in its sole discretion, either to waive in writing the Condition Precedent and proceed with the purchase or terminate this Agreement, and, upon any such termination, Escrow Agent or Seller, as applicable, shall immediately deliver Seller's Documents (as defined below) to Seller and deliver Buyer's preliminary change of ownership report and the Deposits to Buyer, and charge Seller for any cancellation charges.

6. Remedies.

A. In the event the sale of the Property is not consummated because of a default on the part of Buyer, the Deposits and the interest accrued thereon shall be paid to and retained by Seller as liquidated damages. The parties have agreed that Seller's actual damages, in the event of a default by Buyer, would be extremely difficult or impracticable to determine. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSITS HAVE BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES AND AS SELLER'S EXCLUSIVE REMEDY AGAINST BUYER, AT LAW OR IN EQUITY, IN THE EVENT OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF BUYER. SELLER'S RETAINING THE DEPOSITS AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY UNDER CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTION 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE. SELLER AGREES THAT THESE LIQUIDATED DAMAGES SHALL BE IN LIEU OF ANY OTHER MONETARY RELIEF OR OTHER REMEDY, INCLUDING WITHOUT LIMITATION SPECIFIC PERFORMANCE, TO WHICH SELLER OTHERWISE MIGHT BE ENTITLED UNDER THIS AGREEMENT, AT LAW OR IN EQUITY. SELLER WAIVES ALL OTHER REMEDIES AGAINST BUYER FOR BUYER'S FAILURE TO PURCHASE THE PROPERTY IN ACCORDANCE WITH THIS AGREEMENT.

INITIALS:

Seller

*MC*

Buyer

B. Subject to Section 6(A), if the Escrow shall fail to close as a result of Buyer's breach of any of its obligations hereunder, then upon Seller's election, this Agreement shall terminate and Escrow Agent shall immediately deliver Seller's Documents (as defined below) to Seller and deliver Buyer's preliminary change of ownership report and other deposits to Buyer, and charge Buyer for any cancellation charges. If the Escrow shall fail to close as a result of Seller's breach of any of its obligations hereunder, then upon Buyer's election, Buyer may either (i) terminate this Agreement and demand Escrow Agent to deliver Seller's Documents to Seller, deliver Buyer's preliminary change of ownership report and other deposits to Buyer, return the Deposit to Buyer, and charge Seller for any cancellation charges and Seller shall pay to Buyer any title, escrow, legal, environmental assessment, inspection fees incurred by Buyer and any other expenses incurred by Buyer during the period from and after its execution of the Option Agreement in connection with the performance of its due diligence review and development of the Property and Seller shall pay to Buyer any Deposits previously disbursed by the Escrow Agent to Seller under the Option Agreement or (ii) continue this Agreement and sue for specific performance and/or damages hereunder, including Buyer's costs and expenses incurred hereunder.

7. Closing and Escrow.

A. If the Property is leased to a third party at the time Buyer exercises the Option, the Closing will occur on or before the date which is sixty (60) days following the Effective Date of this Agreement (the "Closing Date"). If the Property is not leased to a third party at the time Buyer exercises the Option, the Closing will occur on or before the date which is thirty (30) days following the Effective Date of this Agreement (also, the "Closing Date"). Notwithstanding the foregoing, if the Property is not leased to a third party at the time Buyer exercises the Option, Buyer may send a written notice to Seller electing to cause the Closing Date to occur prior to the scheduled Closing Date, in which event, the Closing Date shall occur on the date set forth in such written notice, which date shall not be less than ten (10) business days after the date of such notice.

B. Upon mutual execution of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with the Title Company and this Agreement shall serve as instructions to the Title Company (as the escrow holder for consummation of the purchase and sale contemplated hereby). Seller and Buyer agree to execute such additional escrow instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement; provided, however, that in the event any conflict between such additional instructions and the terms of this Agreement, the terms of this Agreement shall prevail.

C. At or before the Closing, Seller shall deliver to Buyer the following documents ("Seller's Documents"):

- (i) a duly executed and acknowledged Deed;
- (ii) a duly executed Assignment of Intangible Property;
- (iii) any other relevant original Due Diligence Materials (as defined in the Option Agreement) not previously delivered to Buyer;
- (iv) an affidavit that Seller is not a "foreign person" within the meaning of Section 1445(e)(3) of the Internal Revenue Code of 1986 and is not subject to withholding under California or U.S. tax law in form reasonably acceptable to Buyer, duly executed by Seller;
- (v) such resolutions, authorizations, or agreements relating to Seller as shall be reasonably required by Buyer and/or Title Company;
- (vi) such owner's affidavits as the Title Company may require to issue the CLTA Policy with such endorsements as Buyer may reasonably require and/or any gap

indemnity or similar instrument required to allow the Closing to be conducted as a so called "New York style" closing; and

- (vii) any other instruments, records or correspondence called for hereunder which have not previously been delivered or which otherwise may be necessary and appropriate to complete the Closing of the transactions contemplated herein.

Buyer may waive compliance on Seller's part under any of the foregoing items by an instrument in writing.

D. At or before the Closing, Buyer shall deliver to Seller the remaining Purchase Price.

E. Seller and Buyer shall each deposit such other instruments as are reasonably required by Escrow Agent or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof. All documents to be delivered at Closing and all payments to be made under this Agreement shall be delivered into escrow with the Title Company.

F. Escrow Agent shall prorate the following items, as of the Closing, using a 365 day year: all real property taxes and assessments relating to the Property using the latest tax bills. Buyer shall be responsible for any supplemental assessments or reassessments attributable to any period after the Closing. Buyer shall pay any supplemental taxes assessed pursuant to Chapter 3.5 (Section 75) of the California Revenue and Taxation Code resulting from the sale of the Property to Buyer. The parties acknowledge that there are no utility or insurance costs to be prorated and that no personal property is included in the sale.

G. Seller shall pay any documentary transfer taxes, one-half of all fees charged by Escrow Agent in connection with the Escrow and any other usual seller's costs customary in Fresno County. Buyer shall pay all costs associated with any premium insurance policy additional to the CLTA Policy, one-half of all fees charged by Escrow Holder in connection with the Escrow and any other buyer's costs customary in Fresno County. Escrow Holder may reimburse itself for Seller's share of cost and expenses out of the cash proceeds to be dispersed to Seller. The parties believe no sales or use tax will be due or payable in connection with the transfer of the Property to Buyer hereunder.

8. Representations and Warranties of Seller. Seller hereby represents and warrants to and covenants with Buyer as set forth below. The phrase "to Seller's knowledge," shall mean the actual, current knowledge of Seller's managerial staff, without duty of independent investigation.

A. To Seller's knowledge, there is no litigation pending or threatened affecting the Property that might detrimentally affect the use or operation of the Property for solar power generation or the ability of Seller to perform its obligations under this Agreement. Seller shall notify Buyer promptly of any such litigation of which Seller becomes aware.

B. Seller is a California water district duly organized and validly existing under California Water Code Section 34000 et seq.; this Agreement and all documents executed by Seller which are to be delivered to Buyer at the Closing are and at the time of Closing will be duly authorized, executed and delivered by Seller, are and at the time of Closing will be legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms, are and at the time of Closing will be sufficient to convey title (if they purport to do so), and do not and at the time of Closing will not violate any provision of any agreement or judicial order to which Seller or the Property is subject.

C. At the time of Closing, there will be no outstanding written or oral contracts made by Seller for any improvements to the Property which have not been fully paid.

D. Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code.

E. Seller has not used, manufactured, generated, treated, stored, disposed of, or released any Hazardous Material on, under or about the Property or transported any Hazardous Material over the Property. Seller

has not installed, used or removed any storage tank on, from or in connection with the Property, except in full compliance with all environmental laws, and to Seller's knowledge there are no storage tanks or wells (whether existing or abandoned) or any solid waste dumps located on, under or about the Property. For the purposes hereof, "Hazardous Material" shall mean any substance, chemical, waste or other material which is listed, defined or otherwise identified as "hazardous" or "toxic" under any federal, state, local or administrative agency ordinance or law; or any regulation, order, rule or requirement adopted thereunder, as well as any formaldehyde, urea, polychlorinated biphenyls, petroleum, petroleum product or by-product, crude oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel or mixture thereof, radon, asbestos, and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. §§ 3011 et seq.

F. Seller is the legal and equitable owner of the Property, with full right to convey the same, and without limiting the generality of the foregoing, Seller has not granted any option or right of first refusal or first opportunity to any person or entity to acquire any interest in any of the Property or entered into any other purchase and sale agreement with respect to the Property.

G. There are no obligations in connection with the Property which will be binding upon Buyer after Closing, except (i) matters which are set forth in the Preliminary Report, and (ii) Permitted Encumbrances.

H. Seller has not filed or been the subject of any filing of a petition under the Federal Bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors.

I. As of the Closing there will be no leases, licenses or other occupancy agreements, or service contracts whether written or oral, affecting the Real Property.

9. Physical Condition of Property, Applicable Laws and Regulations, and Releases.

A. Except as expressly provided herein, Seller makes no representation or warranty whatsoever as to any aspect of the Property, including without limitation the physical condition of the Property, water supplies available to the Property, or the value or profitability of the Property. Subject to Seller's representations, warranties and covenants in this Agreement, Buyer acknowledges and agrees that (i) Buyer shall make its own independent examination and evaluation of the property being purchased, and shall not rely upon Seller, its agents or representatives, or any other persons for any data with respect to the Property, its improvements, or past, present, or future production and/or profitability of the same; (ii) Buyer is aware that the Property has been used for farming for many years, and that various petroleum products, fuel, gasoline and chemicals, including fertilizers, herbicides and pesticides, customarily used in farming, some of which may, as of the date hereof, be considered to be hazardous or toxic, may have been used, stored, mixed and applied to the Property in the course of the farming activities conducted thereon or on adjacent property; (iii) Buyer shall acquire the Property on the basis of its own investigation of the physical condition of the Property, including subsurface conditions, improvements, water supply, and irrigation systems; and (iv) Buyer shall acquire the Property in an "AS IS" condition, and assumes the risks that adverse physical conditions may not have been revealed by its investigation.

B. Except as expressly provided herein, Seller makes no representation or warranty whatsoever as to operative or proposed governmental laws or regulations, including, but not limited to, zoning, environmental, and land and water use laws and regulations, to which the Property may be subject. Subject to Seller's representations, warranties and covenants in this Agreement, Buyer acknowledges and agrees that it shall acquire the Property on the basis of its own review and investigation of the applicability and effect of such laws and regulations, and that Buyer assumes the risks that adverse matters may not have been revealed by its investigation. Seller makes no warranty or representation of any kind or nature whatsoever with respect to water available for use in connection with the Property.

C. Seller shall make water available to the Property in accordance with its general policies applicable to municipal and industrial uses, as such policies may be amended from time to time.

Without limiting the foregoing, Seller has not made and hereby disclaims any and all representations and warranties as to the quality, quantity, adequacy, availability, deliverability, reliability, transferability or cost of surface or well water or water rights for the Property. Buyer is aware that surface water supplies available to the Property are exported through the Delta, and are therefore subject to regulatory and judicial restrictions due to environmental and other constraints with which Buyer is familiar. Buyer further understands that agricultural irrigation water deliveries to the Property are subject to Federal Reclamation law.

D. Subject to Section 9(E) below, Buyer waives, releases, remises, acquits and forever discharges Seller and its successors, directors, officers, employees, agents and volunteers of and from any and all suits, causes of action, legal or administrative proceedings, claims, demands, actual damages, punitive damages, losses, costs, liabilities, interest, attorneys fees and expenses of whatever kind and nature, in law or in equity, known or unknown, which Buyer ever had, now has, hereafter can, shall or may have or acquire or possess or arising out of or in any way connected with directed or indirectly out of, or in any way connected with, based upon, arising out of the condition, status, quality, nature, contamination or environmental state of the Property. Buyer waives the benefit of California Civil Code Section 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH ME DEBTOR.”

E. Notwithstanding anything contained elsewhere in this Agreement, including, without limitation, Sections 9 (A) through (D) above, nothing in this Agreement shall be read, construed or interpreted as a release or waiver of: (a) any breach by Seller of this Agreement; (b) any fraud, deceit, concealment, or intentional misrepresentation by Seller to Buyer in connection with this Agreement or the Property that could reasonably be expected to constitute a material misstatement or omission about the Property; (c) Seller's continuing obligations under this Agreement; and (d) any obligations by Seller to Buyer pursuant to any other past, present or future agreement or contract between the parties.

10. Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as follows: Buyer is a duly organized and validly existing limited liability company under the laws of the State of Delaware and qualified to do business in the State of California; this Agreement and all documents executed by Buyer which are to be delivered to Seller at the Closing are or at the time of Closing will be duly authorized, executed and delivered by Buyer, and are or at the Closing will be legal, valid and binding obligations of Buyer, and do not and at the time of Closing will not violate any provisions of any agreement or judicial order to which Buyer is subject.

11. Risk of Loss. In the event (A) any material loss or damage occurs to the Property prior to the Closing, the cost of repair of which would exceed One Hundred Thousand Dollars (\$100,000) or (B) any condemnation proceedings are commenced against all or any portion of the Property prior to the Closing, then, notwithstanding anything to the contrary in this Agreement, Buyer shall have the right to terminate this Agreement, the Escrow Agent or Seller, as applicable, shall refund the Deposits, plus all interest thereon to Buyer, Buyer shall return to Seller all Due Diligence Materials and any copies thereof and neither party shall have any further rights or obligations hereunder.

12. Possession. Possession of the Property shall be delivered to Buyer on the Closing Date.

13. Maintenance of the Property. Seller shall maintain the Property in good order, condition and repair, reasonable wear and tear excepted and otherwise operate the Property in the same manner as before the making of this Agreement, as if Seller were retaining the Property. Except as requested by Buyer, Seller shall not consent to any change in the zoning, permitted uses or other entitlements affecting the Property between the Effective Date and the Closing. Seller shall cause to be discharged all mechanics' and materialmen's liens arising from any labor or materials furnished to the Property prior to the time of Closing.

14. Buyer's Consent to New Contracts Affecting the Property; Termination of Existing Contracts.

A. Seller shall not enter into any lease or contract affecting the Property which shall survive the Closing.

B. Seller shall terminate prior to the Closing, at no cost or expense to Buyer, any leases or contracts except for Permitted Encumbrances that could impose obligations on Buyer or encumber the Property after the Closing.

15. Cooperation with Buyer. Seller shall cooperate and do all acts as may be reasonably required or requested by Buyer with regard to the fulfillment of any Condition Precedent including execution of any documents, applications or permits, but Seller's representations and warranties to Buyer shall not be affected or released by Buyer's waiver or fulfillment of any Condition Precedent. Seller hereby irrevocably authorizes Buyer and its agents to make all inquiries with and applications to any third party, including any governmental authority, as Buyer may reasonably require to complete its due diligence.

16. Development of the Property.

A. Buyer's Rights and Obligations. Seller authorizes Buyer to prepare and submit any necessary applications for approval of the development of the Property for solar power generation with governmental agencies having jurisdiction over the Property (collectively the "Governmental Approvals"), including but not limited to entitlements and applications for formation of assessment districts, development agreements, parcel maps, specific development plans, final subdivision maps, improvement permits, municipal or district annexations, changes in spheres of influence and detachments from or modifications of any special or local district of any type. Seller further authorizes Buyer to negotiate and enter into contracts with utility providers and other third parties related to Buyer's proposed solar power generation project, including, without limitation, power purchase agreements and interconnection agreements. Buyer shall bear the costs and expenses incurred in gaining all Governmental Approvals. Seller acknowledges that Buyer intends to change the zoning applicable to the Property to permit the development of the Property for solar power generation and make such applications and to make such applications and requests for variances and other entitlements as may be required in connection therewith. Seller hereby authorizes Buyer to make such applications and change the zoning as aforesaid prior to the Closing.

B. Cooperation of Parties. The parties shall mutually agree as to when Seller shall be required to attend any public hearings or meetings before or with governmental agencies or their staff regarding any applications necessary for the approval of the Governmental Approvals which Buyer is attempting to obtain in accordance with the intention of this Agreement. Each party shall cooperate with the other party in good faith to obtain all such approvals and for the development of the Property for solar power generation. Without limiting the generality of the preceding sentence, at Buyer's request Seller shall execute all applications, maps and other documentation reasonably necessary for Buyer to obtain its entitlement approvals for the Property. Seller shall not be required to be the "lead agency" for purposes of any compliance with the California Environmental Quality Act (CEQA) necessary for Buyer's intended use of the Property, or required to act in a similar capacity under any similar law.

17. Miscellaneous.

A. Notices: Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, (ii) one (1) day after being deposited with Federal Express or another reliable overnight courier service, or (iii) on the transmitted facsimile telecopy confirmed as received, and addressed as follows:

If to Seller:	Westlands Water District
	3130 North Fresno Street
	Fresno, CA 93703-6056
	Attn: Mr. Tom Glover
	Fax No:

With a copy to:           Sawyers & Holland, LLP  
652 West Cromwell, Suite 101  
Fresno, CA 93711  
Attn: David E. Holland, Esq.  
Fax No.: (559) 438-1781

If to Buyer:             HA Northstar, LLC  
1906 Towne Centre Blvd.  
Annapolis MD 21401  
Attn: General Counsel

With a copy to:           HA Northstar, LLC  
2 Essex Square, Suite 7  
Essex CT 06426  
Attn: General Counsel

or such other address as either party may from time to time specify in writing to the other.

B.     Brokers and Finders. Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee in connection with the sale contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes its claim shall be responsible for said commission or fee and all costs and expenses (including reasonable attorneys' fees) incurred by the other party in defending against the same. The provisions of this paragraph shall survive the Closing.

C.     Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns. This Agreement may not be assigned, except that prior to the Closing, Buyer shall have the unrestricted right to assign this Agreement or designate one or more nominees to take title to any or all of the Property. Should Buyer designate a nominee or otherwise assign any of its rights and obligations under this Agreement, each such designee and/or assignee shall succeed to the specified rights and obligations of Buyer under this Agreement and the Escrow and shall be recognized by both Seller and Escrow Agent as possessing all such rights and obligations, and all references to "Buyer" herein shall be deemed to refer to such nominee or assignee. However, no such assignment or designation shall relieve Buyer of its obligations under this Agreement, which shall remain in effect.

D.     Amendments. Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by Seller and Buyer.

E.     Continuation and Survival of Representations and Warranties. All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to and shall remain true and correct as of the time of Closing, shall be deemed to be material, and shall survive the execution and delivery of this Agreement and the Closing for two years. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Seller in conjunction with the transaction contemplated hereby shall constitute representations and warranties hereunder.

F.     Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

G.     Merger of Prior Agreements. This Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof.

H.     Enforcement. In the event a dispute arises concerning the performance, meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute

shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and attorneys' fees.

I. Time of the Essence. Time is of the essence of this Agreement.

J. Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

K. Marketing. Seller agrees not to negotiate with, market or show the Property or to any other prospective purchasers during the term of this Agreement.

L. 1031 Exchange. The parties acknowledge that Buyer may wish to consummate its purchase of the Property, respectively, as part of a qualified tax-deferred exchange under Section 1031 of the Internal Revenue Code. In such event, Seller will cooperate reasonably with Buyer in such efforts, provided (i) such exchange will be without additional cost, expense or liability to Seller and will not delay the Closing or otherwise adversely affect the rights of Seller under this Agreement. Notwithstanding the general prohibition against assignment of this Agreement, Seller acknowledges and agrees that Buyer shall have the right to assign its right to purchase the Property to a "qualified intermediary".

[signatures on following page(s)]



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

Buyer:

HA NORTHSTAR LLC,  
a Delaware limited liability company

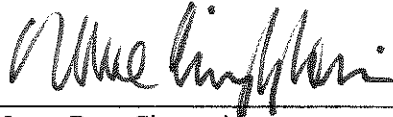
By: HA LAND LEASING HOLDINGS LLC,  
a Delaware limited liability company,  
Its: Sole Member

By: \_\_\_\_\_  
Name: Jeffrey W. Eckel  
Title: President

Date of signature: \_\_\_\_\_

Seller:

WESTLANDS WATER DISTRICT,  
a California water district

By:  \_\_\_\_\_  
Name: Dave Ciapponi  
Title: Secretary

Date of signature: 6.26.14

### LIST OF EXHIBITS

- Exhibit A - Legal Description of Real Property
- Exhibit B - Form of Grant Deed
- Exhibit C - Form of Assignment of Service Contracts, Warranties and Guaranties and Other Intangible Property

## EXHIBIT A

### LEGAL DESCRIPTION OF THE REAL PROPERTY

#### Parcel A:

Lots 49 to 52, inclusive, Lots 61 to 64, inclusive, Lots 67 and 68, Lots 77 and 78, and Lot E of Valley Verde Colony, according to the map thereof recorded in Book 3 Page 59 of Record of Surveys, Fresno County Records. Together with that portion of Kearney Avenue (formerly Sultana Avenue) (abandoned), which would pass by a conveyance of said land under Sections 1112 and 831 of the Civil Code.

EXCEPTING THEREFROM an undivided one-half interest in all oil, gas and minerals on, in and under said real estate, with the right at all times to explore, drill for, mine and remove the same, together with all other rights and privileges incident thereto, as reserved in the deed from General American Life Insurance Company, a corporation, to Russell Giffen, dated March 14, 1941, recorded March 25, 1941, in Book 1904 Page 497 of Official Records, Document No. 11004.

ALSO EXCEPTING THEREFROM an undivided 25% of 100% of all oil, gas and other hydrocarbons and minerals on, in or under said real property, as reserved in the deed from Anderson, Clayton & Co., a Delaware Corporation, to Dudley J. Silveira, et al, recorded December 31, 1974, as Document No. 96737.

APN 019-050-56ST

#### Parcel B:

Lots 65, 66, 79 and 80 of Valley Verde Colony, according to the map thereof recorded in Book 3 Page 59 of Record of Surveys, Fresno County Records. Together with that portion of Kearney Avenue (formerly Sultana Avenue) (abandoned), which would pass by a conveyance of said land under Sections 1112 and 831 of the Civil Code.

EXCEPTING THEREFROM an undivided one-half interest in all oil, gas and minerals on, in or under said real estate, with the right at all times to explore, drill for, mine and remove the same, together with all other rights and privileges incident thereto, as reserved in the deed from Great American Life Insurance Company, a corporation, to Russell Giffen, dated March 14, 1941, recorded March 25, 1941, in Book 1904 Page 497 of Official Records, Document No. 11004.

ALSO EXCEPTING THEREFROM an undivided 25% of 100% of all oil, gas and other hydrocarbons and minerals on, in or under said real property, as reserved in the deed from Anderson, Clayton & Co., a Delaware Corporation, to Dudley J. Silveira, et al, recorded December 31, 1974, as Document No. 96737.

APN: 019-050-55ST

EXHIBIT B

FORM OF GRANT DEED

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

HA Northstar LLC  
1906 Towne Centre Blvd.  
Annapolis MD 21401  
Attn: General Counsel

**MAIL TAX STATEMENTS TO:**

HA Northstar LLC  
1906 Towne Centre Blvd.  
Annapolis MD 21401  
Attn: General Counsel

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(Above Space For Recorder's Use Only)

APN: 019-050-56ST; 019-050-55ST

Pursuant to Section 11932 of the Revenue and Taxation Code the amount of transfer tax will be shown on a separate statement.

**GRANT DEED**

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Westlands Water District, a California water district ("Grantor"), hereby grants to HA Northstar LLC, a Delaware limited liability company ("Grantee"), that certain real property (the "Property") located in the County of Fresno, State of California, more particularly described in Exhibit A attached hereto and incorporated herein by reference, together with (a) all rights, privileges and easements appurtenant to the Property, as well as all development rights, air rights, and any rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Property and all of Grantor's right, title and interest in and to all roads and alleys adjoining or servicing Property and (b) all improvements and fixtures located on the Property (but excluding the right of Grantor, if any, in and to any existing pipeline improvements located within that area near the southern property line of the Property that is encumbered by that certain easement granted pursuant to that certain Contract and Grant of Easement recorded on March 2, 1966, as Instrument No. 16309, at Book 5281, Page 594, in the Official Records of Fresno County, California).

RESERVING UNTO THE GRANTOR all minerals, oil, gas and other hydrocarbon substances under the Property that are more than 500 feet below the surface, to the extent not previously reserved such that Grantor shall have no rights to use or access the surface of the Property, or any subsurface area within 500 feet of the surface of the Property, to remove, exploit or otherwise benefit from such minerals, oil, gas and other hydrocarbon substances.

ALSO RESERVING UNTO THE GRANTOR, the exclusive, permanent right to all water allocations and similar entitlements appurtenant to or associated with the Property by virtue of its location with Grantor's service area, including without limitation the right to apply for and receive from Grantor

or its successors a ratable allocation of water under California Water Code Section 35420 or any successor statute.

Notwithstanding any express or implied provision of this deed or any other agreements between Grantor and Grantee, in no event shall Grantee or its successors or assigns permit any crops to be planted or grown on the real property conveyed hereby until November 1, 2014, at which time the restriction imposed by this paragraph shall terminate without further actions by the parties. Grantor and Grantee agree that the foregoing restriction is necessary and appropriate to protect the public purpose for Grantor's original acquisition of the subject real property.

DATED: \_\_\_\_\_

WESTLANDS WATER DISTRICT,  
a California water district

By: \_\_\_\_\_  
Name:  
Title:

#### ACKNOWLEDGEMENT

State of \_\_\_\_\_ )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

Witness my hand and official seal.

\_\_\_\_\_  
(Signature) (Seal)

EXHIBIT A to GRANT DEED

**Legal Description**

Parcel A:

Lots 49 to 52, inclusive, Lots 61 to 64, inclusive, Lots 67 and 68, Lots 77 and 78, and Lot E of Valley Verde Colony, according to the map thereof recorded in Book 3 Page 59 of Record of Surveys, Fresno County Records. Together with that portion of Kearney Avenue (formerly Sultana Avenue) (abandoned), which would pass by a conveyance of said land under Sections 1112 and 831 of the Civil Code.

EXCEPTING THEREFROM an undivided one-half interest in all oil, gas and minerals on, in and under said real estate, with the right at all times to explore, drill for, mine and remove the same, together with all other rights and privileges incident thereto, as reserved in the deed from General American Life Insurance Company, a corporation, to Russell Giffen, dated March 14, 1941, recorded March 25, 1941, in Book 1904 Page 497 of Official Records, Document No. 11004.

ALSO EXCEPTING THEREFROM an undivided 25% of 100% of all oil, gas and other hydrocarbons and minerals on, in or under said real property, as reserved in the deed from Anderson, Clayton & Co., a Delaware Corporation, to Dudley J. Silveira, et al, recorded December 31, 1974, as Document No. 96737.

APN 019-050-56ST

Parcel B:

Lots 65, 66, 79 and 80 of Valley Verde Colony, according to the map thereof recorded in Book 3 Page 59 of Record of Surveys, Fresno County Records. Together with that portion of Kearney Avenue (formerly Sultana Avenue) (abandoned), which would pass by a conveyance of said land under Sections 1112 and 831 of the Civil Code.

EXCEPTING THEREFROM an undivided one-half interest in all oil, gas and minerals on, in or under said real estate, with the right at all times to explore, drill for, mine and remove the same, together with all other rights and privileges incident thereto, as reserved in the deed from Great American Life Insurance Company, a corporation, to Russell Giffen, dated March 14, 1941, recorded March 25, 1941, in Book 1904 Page 497 of Official Records, Document No. 11004.

ALSO EXCEPTING THEREFROM an undivided 25% of 100% of all oil, gas and other hydrocarbons and minerals on, in or under said real property, as reserved in the deed from Anderson, Clayton & Co., a Delaware Corporation, to Dudley J. Silveira, et al, recorded December 31, 1974, as Document No. 96737.

APN: 019-050-55ST

EXHIBIT C

ASSIGNMENT OF  
WARRANTIES AND GUARANTIES,  
AND OTHER INTANGIBLE PROPERTY

THIS ASSIGNMENT is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by Westlands Water District, a California water district ("Assignor"), to HA Northstar LLC, a Delaware limited liability company ("Assignee"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in that certain Purchase and Sale Agreement dated as of \_\_\_\_\_, 2014 (the "Purchase Agreement") by and between Assignor and Assignee.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date (as defined below), Assignor hereby assigns and transfers unto Assignee all of its right, title, claim and interest in and under:

(A) all warranties and guaranties made by or received from any third party with respect to any building, building component, structure, fixture, machinery, equipment, or material situated on, contained in any building or other improvement situated on, or comprising a part of any building or other improvement situated on, any part of that certain real property described in Exhibit A attached hereto (collectively, "Warranties"); and

(B) any other Intangible Property.

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1 In the event of any litigation between Assignor and Assignee arising out of this Assignment, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, attorneys' fees.

2 This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

3 This Assignment shall be governed by and construed and in accordance with the laws of the State of California.

4 For purposes of this Assignment, the "Effective Date" shall be the date of the Closing (as defined in the Purchase Agreement).

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment the day and year first above written.

ASSIGNOR:

WESTLANDS WATER DISTRICT,  
a California water district

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of signature: \_\_\_\_\_

ASSIGNEE:

HA NORTHSTAR LLC,  
a Delaware limited liability company

By: HA LAND LEASING HOLDINGS LLC,  
a Delaware limited liability company,  
Its: Sole Member

By: \_\_\_\_\_  
Name: Jeffrey W. Eckel  
Title: President

Date of signature: \_\_\_\_\_



Exhibit A to Assignment  
of Warranties and  
Guaranties and Other Intangible Property

**Legal Description**

Parcel A:

Lots 49 to 52, inclusive, Lots 61 to 64, inclusive, Lots 67 and 68, Lots 77 and 78, and Lot E of Valley Verde Colony, according to the map thereof recorded in Book 3 Page 59 of Record of Surveys, Fresno County Records. Together with that portion of Kearney Avenue (formerly Sultana Avenue) (abandoned), which would pass by a conveyance of said land under Sections 1112 and 831 of the Civil Code.

EXCEPTING THEREFROM an undivided one-half interest in all oil, gas and minerals on, in and under said real estate, with the right at all times to explore, drill for, mine and remove the same, together with all other rights and privileges incident thereto, as reserved in the deed from General American Life Insurance Company, a corporation, to Russell Giffen, dated March 14, 1941, recorded March 25, 1941, in Book 1904 Page 497 of Official Records, Document No. 11004.

ALSO EXCEPTING THEREFROM an undivided 25% of 100% of all oil, gas and other hydrocarbons and minerals on, in or under said real property, as reserved in the deed from Anderson, Clayton & Co., a Delaware Corporation, to Dudley J. Silveira, et al, recorded December 31, 1974, as Document No. 96737.

APN 019-050-56ST

Parcel B:

Lots 65, 66, 79 and 80 of Valley Verde Colony, according to the map thereof recorded in Book 3 Page 59 of Record of Surveys, Fresno County Records. Together with that portion of Kearney Avenue (formerly Sultana Avenue) (abandoned), which would pass by a conveyance of said land under Sections 1112 and 831 of the Civil Code.

EXCEPTING THEREFROM an undivided one-half interest in all oil, gas and minerals on, in or under said real estate, with the right at all times to explore, drill for, mine and remove the same, together with all other rights and privileges incident thereto, as reserved in the deed from Great American Life Insurance Company, a corporation, to Russell Giffen, dated March 14, 1941, recorded March 25, 1941, in Book 1904 Page 497 of Official Records, Document No. 11004.

ALSO EXCEPTING THEREFROM an undivided 25% of 100% of all oil, gas and other hydrocarbons and minerals on, in or under said real property, as reserved in the deed from Anderson, Clayton & Co., a Delaware Corporation, to Dudley J. Silveira, et al, recorded December 31, 1974, as Document No. 96737.

APN: 019-050-55ST

**SECOND AMENDMENT OF PURCHASE AND SALE AGREEMENT AND ESCROW  
INSTRUCTIONS**

THIS SECOND AMENDMENT OF PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "Amendment") is made and entered into as of the 17<sup>th</sup> day of June, 2014, by and between **WESTLANDS WATER DISTRICT**, a California water district ("Seller"), and **SITECO, LLC**, a Delaware limited liability company ("Buyer"), with reference to the following facts:

A. Seller and Buyer are parties to that certain PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS dated as of January 21, 2011 and FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS dated July 16, 2013, (together, the "Agreement"), pursuant to which Buyer obtained an exclusive and irrevocable option to acquire certain real property as more fully described in the Agreement (the "Property").

B. Seller and Buyer have agreed to amend the Agreement to, among other things, amend the Purchase Price, extend the term of the Agreement, and to provide for the continued payment of Extension Payments for the remainder of the term.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

1. Defined Terms. All capitalized terms referred to herein shall have the same meaning provided in the Agreement, except where expressly defined to the contrary herein.

2. Purchase Price. The first sentence of Section 2 of the Agreement is hereby amended and restated in its entirety as follows:

"The price for the purchase of the Property shall be equal to the product of (a) Seven Thousand Five Hundred Dollars (\$7,500) and (b) the number of acres in the Property on the Closing Date (the "Purchase Price")."

3. First Right of Refusal. Notwithstanding any other provision of the Agreement, prior to the delivery of Buyer's Closing Notice for the applicable land, Seller shall be entitled to receive and accept offers from bona fide 3<sup>rd</sup> parties to purchase portions or all of the lands subject to the Agreement at a higher purchase price than the Purchase Price set forth above (a "3<sup>rd</sup> Party Offer"), provided that Buyer shall have the first right to purchase such lands at the same purchase price as set forth in the 3<sup>rd</sup> Party Offer. Seller agrees that it shall not actively market or initiate an offer to sell the Property,

- a. Prior to Seller's acceptance of any 3<sup>rd</sup> Party Offer, Seller shall provide written notice and a copy of the 3<sup>rd</sup> Party Offer (the "ROFR Notice") to Buyer of the purchase price proposed for the sale to the 3<sup>rd</sup> party. Seller may redact the copy of the 3<sup>rd</sup> Party Offer to delete any confidential information which Seller is unable to publicly disclose pursuant to Seller's governing rules and policies.

- b. Buyer shall have ten (10) business days from the date the ROFR Notice is deemed given pursuant to Section 28 of the Agreement (the "Acceptance Period") to accept the purchase price set forth in the ROFR Notice by delivering to Seller written acceptance on or before 5:00 p.m. on the last day of the Acceptance Period.
- c. If Buyer timely accepts the purchase price set forth in the ROFR Notice, such price shall become the Purchase Price for the lands described in the ROFR Notice under the Agreement. The Purchase Price for all other lands under the Agreement that are not subject to the ROFR Notice shall remain unchanged.
- d. If Buyer fails to timely accept the purchase price set forth in the ROFR Notice, Seller shall be free to sell the lands in the ROFR Notice to the 3<sup>rd</sup> party. Buyer shall have no further rights to such lands, and shall immediately execute and deliver to Seller a quitclaim deed of Buyer's interests in such lands; provided, however, if a contract for the purchase of the lands pursuant to the ROFR Notice is not executed or is subsequently terminated, Buyer's rights under the Agreement to such lands shall be reinstated and the Agreement shall be amended to provide for such reinstatement.

4. Extension of Closing Date and Minimum Land Purchase. Section 8(a) of the Agreement is hereby amended and restated in its entirety as follows:

"Unless otherwise extended by the parties in writing, and subject to Section 8(b) of the Agreement, the transactions contemplated by the Agreement and all associated actions shall be completed (the "**Closing**") upon a date reasonably selected by Buyer following the satisfaction or waiver of all conditions to Closing, but (subject to Section 8(b)) in no event later than **May 21, 2014 (the "Closing Date")**. Buyer may elect to have a Closing as to any Group or Groups within the Property at any time prior to the Closing Date, by delivering notice specifying which Group or Groups shall be subject to such Closing ("**Buyer's Closing Notice**"), provided that, at the first Closing, Buyer must purchase a minimum of 1,280 acres as listed in Exhibit A to the Agreement. Within 5 business days thereafter, Seller and Buyer shall agree upon a date for such Closing with respect to the Group or Groups contained in Buyer's Closing Notice, which shall be prior to the Closing Date, and shall allow Seller sufficient time to provide the tenant under any lease affecting any part of the Group or Groups with 45 days' notice of termination of such lease."

5. Extension Periods. The table of Extension Periods and Extension Payments at Section 8(b) of the Agreement is hereby extended by the following:

<u>Extension Period</u>	<u>Extension Payment</u>
Extension 11 (replaces Extension Period 11 of table in Section 8(b)) (May 21, 2014 to August 21, 2014)	\$500,000*
Extension 12 (from August 21, 2014 to November 21, 2014)	\$500,000
Extension 13 (from November 21, 2014 to February 21, 2015)	\$600,000
Extension 14 (from February 21, 2015 to May 21, 2015)	\$600,000
Extension 15 (from May 21, 2015 to August 21, 2015)	\$600,000
Extension 16 (from August 21, 2015 to November 21, 2015)	\$600,000
Extension 17 (from November 21, 2015 to February 21, 2016)	\$700,000
Extension 18 (from February 21, 2016 to June 30, 2016)	\$700,000

\* The parties acknowledge that Buyer made the Extension 11 \$400,000 Extension Payment to Seller on May 21, 2014 pursuant to the terms of the existing Agreement, and Seller agrees that Buyer may pay to Seller the additional \$100,000 payment (to equal the new Extension 11 Payment of \$500,000) on or before ten (10) business days following the mutual execution of this Amendment.

6. Conditions Precedent. The following is added as Section 9(h) to the Agreement:

"Prior to or concurrently with the first Closing under this Agreement, Buyer shall close escrow for the purchase of Fresno County APN 028-101-75S, owned by David E. Wakefield and Sharon M. Wakefield, Trustees of the David and Sharon Wakefield Living Trust, under Declaration of Trust dated March 28, 1997."

7. Reimbursement of Expenses. Within ten (10) business days after full execution of this Second Amendment, Buyer shall pay Five Thousand Dollars (\$5,000) directly to Seller to reimburse Seller for internal and external staff and legal costs incurred by Seller in connection with this Second Amendment. No portion of such payment shall be refundable or credited to the Purchase Price in the event Buyer elects to proceed with a Closing.

8. Interpretation of Amendment. Except to the extent expressly set forth herein, the Agreement shall remain in full force and effect.

9. Binding Effect. Seller and Buyer confirm that the Agreement is binding on the undersigned and further approve of the Agreement, except as may be inconsistent with the specific terms of this Amendment, and acknowledge that the undersigned are bound thereby. Seller further acknowledges that Seller has received the Deposit and all Extension Payments due

as of the date hereof.

10. Multiple Counterparts. This Amendment may be executed in counterparts, which when taken together shall constitute one and the same instrument. The parties contemplate that they may be executing counterparts of this Amendment transmitted by facsimile or electronic mail and agree and intend that a signature by facsimile machine or electronic mail shall bind the party so signing with the same effect as though the signature were an original signature.

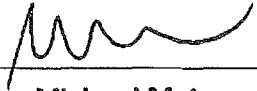
11. Entire Agreement. Together with the Agreement, this Amendment constitutes the entire agreement of Seller and Buyer with respect to the subject matter of this Amendment and the Agreement and supersedes any and all oral and written agreements and understandings with respect to the subject matter of this Amendment and the Agreement by and between the parties.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the day and year first above written.

BUYER:

SITECO LLC,  
a Delaware limited liability company

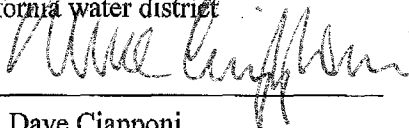
By: 

Name: Michael Metzner

Its: Chief Financial Officer

SELLER:

WESTLANDS WATER DISTRICT,  
a California water district

By: 

Name: Dave Ciapponi

Its: Secretary

MINUTES OF THE REGULAR MEETING OF THE BOARD OF DIRECTORS OF  
WESTLANDS WATER DISTRICT

July 15, 2014

A regular meeting of the Board of Directors of Westlands Water District was called to order by President Peracchi at the District's Fresno Office, 3130 N. Fresno Street, California at 1:30 p.m.

Directors present:

Don Peracchi, President  
Jim Anderson  
Frank Coelho  
Larry Enos  
Dan Errotabere  
Gary Esajian  
Todd Neves  
Alan Sano  
Sarah Woolf

Staff present:

Tom Birmingham, General Manager  
Craig Manson, General Counsel  
Dan Pope, Chief Operating Officer  
Dave Ciapponi, Secretary  
Bobbie Ormonde, Director of Finance & Administration  
Jose Gutierrez, Deputy General Manager - Resources  
Gayle Holman, Public Affairs Representative  
Steve Farmer, Supervisor of Customer Accounting  
Kiti Buelna, Junior Engineer  
Karen Clark, Executive Assistant

WATER POLICY COMMITTEE

Authorizing Execution of Purchase and Sale Agreement of District Owned Land

Mr. Birmingham reported that the Board previously approved the sale of 626.82 acres of District owned land. The parcels are identified as APN: 019-050-56ST and APN: 019-050-55ST. The escrow company required documentation that the Board had authorized the Secretary to execute the sales agreement.

Upon motion duly made and seconded, the Board unanimously approved authorizing the Secretary to execute the Purchase and Sale Agreement for the District owned parcels; APN: 019-050-56ST, and APN: 019-050-55ST.

After the vote, the Secretary announced that the Board approved authorizing the Secretary to execute the Purchase and Sale Agreement for the District owned parcels with the vote as follows:

President Peracchi: Aye

Director Anderson: Aye

Director Coelho: Aye

Director Enos: Aye

Director Errotabere: Aye

Director Esajian: Aye

Director Neves: Aye

Director Sano: Aye

Director Woolf: Aye

---

Dave Ciapponi, Secretary



1 WILLIAM M. SMILAND - State Bar No. 041928  
THEODORE A. CHESTER, JR. - State Bar No. 105405  
2 DANIEL S. KIPPEN - State Bar No. 211582  
SMILAND & KHACHIGIAN  
3 601 West Fifth Street, Seventh Floor  
Los Angeles, California 90071-2004  
4 Telephone: (213) 891-1010  
5 Attorneys for *Peck* Plaintiffs  
6  
7

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 FIREBAUGH CANAL COMPANY; and  
12 CENTRAL CALIFORNIA IRRIGATION  
DISTRICT,

13 Plaintiffs,

14 v.

15 UNITED STATES OF AMERICA,  
16 et al.,

17 Defendants.  
18

19 SUMNER PECK RANCH, a  
California corporation; et al.,

20 Plaintiffs,

21 v.

22 BUREAU OF RECLAMATION; et al.,

23 Defendants.  
24

Case No. CV-F-91-048 OWW DLB

NOTICE OF SETTLEMENT  
AGREEMENT

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TO THE PARTIES AND THIS HONORABLE COURT:

PLEASE TAKE NOTICE that certain parties have arrived at a Settlement Agreement, a copy of which is attached. The settling parties request the Court to enter the Consent Judgment and Consent Order attached to the Settlement Agreement as Exhibits F and Y. Separate copies of the Consent Judgment and Consent Order are being lodged with the Court

Dated: December 11, 2002

SMILAND & KHACHIGIAN  
WILLIAM M. SMILAND  
THEODORE A. CHESTER, JR.  
WILLIAM CHASE AHDERS  
DANIEL S. KIPPEN

By   
Theodore A. Chester, Jr.  
Attorneys for *Sumner Peck* Plaintiffs

**SETTLEMENT AGREEMENT**

**AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT**

**Dated: December 11, 2002**

**AGREEMENT AMONG THE UNITED STATES,  
WESTLANDS WATER DISTRICT, AND THE PECK PLAINTIFFS  
FOR SETTLEMENT OF THE SUMNER PECK LAWSUIT**

This agreement ("Agreement") is entered into this 11<sup>th</sup> day of December, 2002 by the following parties:

The persons and entities listed on Schedule 1 hereto (collectively "the Peck Plaintiffs"). The Peck Plaintiffs are plaintiffs, or successors-in-interest to plaintiffs, in the lawsuit entitled Sumner Peck Ranch, Inc., et al. v. Bureau of Reclamation, et al., Civ. No. F-91-048 OWW (the "Lawsuit"), in the United States District Court for the Eastern District of California (the "District Court"), which had been partially consolidated with the action entitled Firebaugh Canal Co., et al. v. United States, et al., Civ. No. CV-F-88-634 OWW, in the District Court. Pursuant to the District Court's order dated October 24, 2002, the Peck Plaintiffs' inverse condemnation claims against the United States have been transferred to the United States Court of Federal Claims (the "Court of Federal Claims Lawsuit")

The United States of America, Department of the Interior, Bureau of Reclamation ("the United States" or "Federal Defendants"). The United States is a defendant in the Lawsuit;

Westlands Water District ("Westlands"). Westlands is a defendant as well as a counterclaimant and cross-claimant in the Lawsuit;

The United States, Westlands, and the Peck Plaintiffs are collectively referred to herein as "the Parties."

WHEREAS the United States is currently making Central Valley Project ("CVP") water available to Westlands for delivery to water users in Westlands, including the Peck Plaintiffs, pursuant to, inter alia, a water service contract dated June 3, 1963 ("1963 Contract") and the Judgment in the consolidated lawsuits entitled Barcellos and Wolfsen, Inc. et al. v. Westlands Water District et al., and Westlands Water District, et al. v. United States, Consolidated Case Nos. F-79-106 OWW and F-81-245 (E.D.Cal.) dated December 30, 1986 (the "Barcellos Judgment");

WHEREAS the Peck Plaintiffs have, or will have before the closing hereinafter provided for, good and marketable title to the approximately 34,100 acres of farmlands described in **Exhibits A1 through A4**, attached hereto including improvements appurtenant thereto, affixed thereto, and included therein, and water entitlements appurtenant thereto (hereinafter, the "Peck Covered Lands" or the "Covered Lands"). Included among these lands are approximately 32,412 acres of farmlands described in **Exhibits A2 through A4**, attached hereto including improvements appurtenant thereto, affixed thereto, and included therein, and water entitlements appurtenant thereto, that may be

transferred to Westlands and/or removed from irrigated agricultural use pursuant to this Agreement (hereinafter, the "Peck Subject Lands" or the "Subject Lands");

WHEREAS Westlands has threatened to compulsorily or involuntarily condemn and convert, under the Takings Clauses of the United States and California constitutions and the statutes governing eminent domain, the Peck Covered Lands, and such condemnation and conversion is imminent;

WHEREAS the Peck Plaintiffs in the Lawsuit and the Court of Claims Lawsuit assert claims against the United States and Westlands sounding in tort, contract, and inverse condemnation, as well as for injunctive relief under the San Luis Act, Public Law 86-488, 74 Stat. 156, concerning CVP water deliveries to Westlands farmlands and the failure to provide adequate drainage to the Covered Lands (the "Peck Claims"). The United States and Westlands deny liability on the Peck Claims;

WHEREAS pursuant to portions of this Agreement, interests in the Peck Covered Lands are being compulsorily or involuntarily converted into money;

WHEREAS Westlands in the Lawsuit asserts counterclaims against the Peck Plaintiffs concerning CVP water deliveries to the Covered Lands (the "Westlands Counterclaims"). The Peck Plaintiffs deny liability on the Westlands Counterclaims;

WHEREAS Westlands in the Lawsuit asserts cross-claims against the United States concerning CVP water deliveries to the Covered Lands (the "Westlands Cross-claims"). The United States denies liability on the Westlands Cross-claims;

WHEREAS the Parties desire to settle and resolve the disputes that have arisen between and among them without further litigation and without admitting or conceding liability;

NOW, THEREFORE the Parties mutually stipulate and agree as follows:

1. General Provisions. This Agreement is executed solely for the purpose of compromising and settling this litigation and nothing herein shall be construed as a precedent in any other context. Nothing in this Agreement shall deprive any Party of any right to seek remedies for breach of this Agreement in a court of competent jurisdiction. This Agreement shall bind the Parties only as may be necessary to implement the terms of the Agreement, and the Agreement shall not otherwise be cited, construed, offered in evidence, or referred to in any proceedings, whether judicial or administrative. Nothing in this Agreement shall be construed or offered in evidence in any proceeding as an admission or concession of wrongdoing, liability, or any issue of fact or law concerning the claims settled under this Agreement. Nothing in this Agreement shall be construed to deprive a federal official of authority to revise, amend, or promulgate regulations. The Parties do not intend by this Agreement to confer any rights or interests on any third-parties or non-parties to the Agreement. No Member of or Delegate to Congress, Resident Commissioner or official of

Westlands shall benefit from this Agreement other than as a water user or landowner in the same manner as other water users or landowners. Nothing in this Agreement shall be construed to commit a federal official to expend funds not appropriated by Congress. To the extent that the expenditure or advance of any money or the performance of any obligation of the United States under this Agreement is to be funded by appropriation of funds by Congress, the expenditure, advance, or performance shall be contingent upon the appropriation of funds by Congress that are available for this purpose and the apportionment of such funds by the Office of Management and Budget. No breach of this Agreement shall result and no liability shall accrue to the United States in the event funds are not appropriated or apportioned. Notwithstanding the foregoing, the obligations of the United States under the Consent Judgment against it in the United States District Court provided in Paragraph 6.A. hereof shall be controlled by applicable law.

2. Interpretation. The terms set forth in this Agreement are intended by the parties as a final expression of agreement with respect to such terms, and may not be contradicted by evidence of any prior agreement or any contemporaneous oral statement. This Agreement is a complete and exclusive statement of the Parties' agreement which may not be explained or supplemented by evidence of additional terms. This Agreement may not be altered or modified except by written instrument signed by each of the Parties or as otherwise provided by order of a court of competent jurisdiction. The underlined paragraph headings in this Agreement are for the convenience of the Parties and are not intended to be given any substantive effect in interpreting the Agreement. The Parties acknowledge that each Party and/or its counsel have reviewed and revised this Agreement and that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement or any amendments or exhibits to this Agreement or any document executed and delivered by the Parties in connection with this Agreement. This Agreement shall be governed by, and construed and enforced in accordance with, and pursuant to, the laws of the United States of America, including federal reclamation law and federal common law applicable to contracts made and performed by the United States and to which it is a party. The Parties acknowledge and agree that any claim or action by or among any of the Parties hereto that arises out of or relates to the provisions of this Agreement arises under the laws of the United States for the purpose of federal question jurisdiction under 28 U.S.C. §1331.

3. Completion Date. The running of any period provided for any Party's performance under this Agreement shall be tolled during the pendency of any third-party litigation that unavoidably delays or prevents that Party's performance under this Agreement.

4. Interim Stay. Upon execution of this Agreement, the Parties shall jointly move the District Court to stay the Peck Claims, the Westlands Counterclaims, and the Westlands Cross-claims (the "Covered Claims") until entry by the District Court of the Consent Judgment and Consent Order provided in Paragraph 6., below. This Agreement shall not be effective if the District Court declines to stay the Covered Claims.

5. Retirement of the Subject Lands.

a. Conveyance by Peck Plaintiffs. On the applicable Transfer Closing dates provided in Paragraph 5.d, below, the Peck Plaintiffs will convey to Westlands, by grant deed, title to the Subject Lands listed in this subparagraph, below, pursuant to, and in accordance with this Agreement, together with all improvements that as of March 1, 2002 were appurtenant thereto, affixed thereto, and included therein, and water entitlements that as of March 1, 2002 were appurtenant thereto. Provided that, groundwater pumping equipment, including pump motors, and cotton ginning equipment and facilities, shall not be deemed to be improvements hereunder. The lands conveyed shall be left in a good condition consistent with good husbandry, local custom and practice. The Peck Plaintiffs represent and warrant that all the lands listed in this subparagraph, below, are lands that are impacted by the failure to furnish drainage service alleged in the Lawsuit.

(1) No lands are to be conveyed at the First Transfer Closing;

(2) The lands described in **Exhibit A2** (approximately 10,804 acres) are to be conveyed at the Second Transfer Closing;

(3) The lands described in **Exhibit A3** (approximately 10,547 acres) are to be conveyed at the Third Transfer Closing;

(4) The lands described in **Exhibit A4** (approximately 11,061 acres) are to be conveyed at the Fourth Transfer Closing.

The Peck Plaintiffs and Westlands agree that, to the extent consistent with applicable law, all FSA Crop History for Subject Lands that are conveyed to Westlands pursuant to this Agreement shall be retained by, or transferred as directed by, the Peck Plaintiffs, and Westlands agrees to reasonably cooperate with Peck Plaintiffs to accomplish the same. As used herein, "FSA Crop History" means contract acres, yields, crop acreage bases, allotments, or other entitlements or crop history attributes as may be carried on the books and records of the USDA Farm Service Agency or Commodity Credit Corporation.

b. Payment by Westlands. Westlands shall pay Eight Hundred Fifty Dollars (\$850) for each acre of land conveyed in fee title to Westlands pursuant to, and in accordance with, this Agreement. Within ten (10) days of the execution of this Agreement (the "Agreement Date"), an escrow shall be opened to consummate the terms of this Agreement. Escrow shall be opened at the offices of Chicago Title Company, 2425 W. Shaw Avenue, Fresno, California 93711 (the "Escrow Holder"). Within thirty (30) days of the Agreement Date, the Parties agree to jointly prepare, execute and deliver to the Escrow Holder such escrow instructions as are appropriate to enable Escrow Holder to implement the terms of this Agreement including the Land Use Agreements referred to in Section 5(e) of this Agreement (the "Escrow Instructions"). The Parties shall also deposit with the Escrow Holder the Land Use

Agreements referred to in Section 5(e) of this Agreement and all instruments, documents, and other items (a) identified in the escrow instructions, or (b) reasonably required by the Escrow Holder to consummate the transactions provided for by this Agreement by the applicable Transfer Closing dates provided in Paragraph 5.d, below. At or before the applicable Transfer Closing dates provided in Paragraph 5.d, below, Westlands shall cause to be deposited with the Escrow Holder the payments listed in this subparagraph, below. Said payments shall be paid to the Peck Plaintiffs on the applicable Transfer Closing dates provided in Paragraph 5.d, below, subject to the provisions of Paragraphs 5.f, 5.h(1), 5.j(2)(vi), and 5.k(1) of this Agreement.

(1) No money (\$0.00) is to be paid on the date of the First Transfer Closing;

(2) Nine million, one hundred eighty-three thousand, one hundred thirty-six dollars (\$9,183,136) (the precise sum to be calculated based on the number of acres conveyed), plus interest earned thereon from the date of entry of the Consent Judgment provided in Paragraph 6.A., is to be paid on the date of the Second Transfer Closing;

(3) Eight million, nine hundred sixty-five thousand, nine dollars (\$8,965,009) (the precise sum to be calculated based on the number of acres conveyed), plus interest earned thereon from the date of entry of the Consent Judgment provided in Paragraph 6.A., is to be paid on the date of the Third Transfer Closing;

(4) Nine million, four hundred one thousand, nine hundred twenty-six dollars (\$9,401,926) (the precise sum to be calculated based on the number of acres conveyed), plus interest earned thereon from the date of entry of the Consent Judgment provided in Paragraph 6.A., is to be paid on the date of the Fourth Transfer Closing;

c. Additional Payment by Westlands. At the time of entry of the dismissals pursuant to Paragraph 7 hereof, Westlands shall pay Peck Plaintiffs the sum of Five Million Dollars (\$5,000,000.00), by wire transfer to Smiland & Khachigian Trust Account No. 670840 (Mellon 1st Business Bank, Los Angeles, California) to be held and distributed for the benefit of Plaintiffs.

d. Closing. The escrow shall be closed on the date on which the grant deeds and drainage easements provided for by this Agreement are recorded ("Transfer Closing"). The escrow shall be considered to be in a condition to close when the Escrow Holder is authorized under the Escrow Instructions, and when the Escrow Holder is otherwise able to record the grant deeds and covenants and distribute the payments as provided for by this Agreement. If Westlands declines to accept transfer of any of the Subject Lands pursuant to Paragraphs 5.h and/or 5.k of this Agreement, then escrow shall close on the remaining Subject Lands. Unless the closing date is extended by mutual agreement of the Parties, the



escrow must be closed by no later than the dates specified in this subparagraph, below:

- (1) The First Transfer Closing will occur within sixty (60) days of entry of the Consent Judgment provided under Paragraph 6.A.;
- (2) The Second Transfer Closing will occur on or before September 30, 2003;
- (3) The Third Transfer Closing will occur on or before September 30, 2004;
- (4) The Fourth Transfer Closing will occur on or before September 30, 2005.

e. Possession. Possession of the Subject Lands shall be transferred at the applicable Transfer Closing, except that if the closing is before the completion and harvesting of the applicable crop-year, the Peck Plaintiffs may retain possession of the lands on which the crops are growing, to complete and harvest the crops. Any retained possession by the Peck Plaintiffs shall be at their own risk, and they shall indemnify and hold harmless Westlands from any liability in that regard. The additional terms under which the Peck Plaintiffs may retain possession after the applicable Transfer Closing for the purpose of harvesting existing crops shall be set forth in separate agreements titled "Land Use Agreement," in the form of **Exhibit B** to this Agreement.

f. Plow Down. At the applicable Transfer Closing, the Escrow Holder shall hold from the payment deposited by Westlands under Paragraph 5.b, the sum of twenty-five dollars (\$25.00) per acre to insure plow down of the property following completion of harvesting pursuant to the Land Use Agreement. As the crops are harvested, and the plow down occurs in accordance with the Land Use Agreement, the Peck Plaintiffs shall serve written notice of such completion, and a request for release of the held sum pertaining to such land, to the Escrow Holder and to Westlands. Absent written notice of objection by Westlands to release of the funds within 14 days thereafter, the Escrow Holder shall release to the Peck Plaintiffs the portion of the withheld funds attributable to such lands.

g. Assessments. The Peck Plaintiffs shall pay, through escrow, the Westlands assessments and land based charges for the Subject Lands for the period ending February 28 of the year following the year in which such Subject Lands are conveyed to Westlands pursuant to this Agreement. There shall be no proration of same through the escrow. Payment of Westlands' water charges shall be made as set forth in the Land Use Agreement.

h. Preliminary Title Report. Thirty (30) days before the First Transfer Closing date, and sixty (60) days before any other applicable Transfer Closing date, the Peck Plaintiffs shall furnish to Westlands and the United States preliminary title reports for the Subject Lands to be conveyed at that Transfer Closing under Paragraph 5.a, and the Covered Lands concerning which Drainage Easements are to be conveyed at that Transfer Closing under Paragraph 5.m, together with all documents evidencing exceptions or encumbrances noted in the preliminary

title reports. The Peck Plaintiffs shall remove prior to the applicable Transfer Closing date all monetary liens and encumbrances on the Subject Lands. Within fifteen (15) days after the delivery of the preliminary title reports, Westlands or the United States shall notify the Parties in writing of any objection to any exception in the reports. However, objections shall be limited to exceptions which (i) impair marketable title; (ii) materially interfere with Westlands' intended use of the Subject Lands; or (iii) materially interfere with the recordability, efficacy, or enforceability of any Nonirrigation Covenant or Drainage Easement under Paragraph 5.l or 5.m. Westlands and the United States acknowledge that some or all of the mineral rights for the Subject Lands may have been reserved by previous owners of the Subject Lands. Westlands and the United States will not make any objections based on those ownerships.

(1) If any such objection is made by Westlands and the exception is not eliminated before the applicable Transfer Closing, then Westlands may decline to accept transfer of title, pursuant to Paragraph 5.a, to the particular Subject Lands that are the subject of the exception. In the event Westlands declines to accept particular Subject Lands pursuant to this paragraph:

(a) Paragraph 5.a and 5.b of this Agreement shall be terminated with respect to such lands only – the terms of this Agreement shall otherwise remain in force and effect;

(b) the portion of any payments under Paragraph 5.b attributable to such lands, together with interest earned thereon, shall be returned to the party or parties who deposited such funds in the escrow; and

(c) any grant deed(s) attributable to such lands provided in Paragraph 5.a shall be canceled.

(2) If any such objection is made by the United States and the exception is not eliminated before the applicable Transfer Closing, then, unless the Parties execute a mutually acceptable novation to this Agreement within one hundred fifty (150) days of the United States' objection, the United States may decline to accept the recordation of covenants and/or conveyance of easements, pursuant to Paragraph 5.l and/or 5.m, for the particular Subject Lands that are the subject of the exception. In the event the United States declines to accept any covenants and/or easements pursuant to this paragraph:

(a) Paragraphs 5.l, 5.m, and 6 of this Agreement shall be terminated with respect to such lands only – the terms of this Agreement shall otherwise remain in force and effect;

(b) the Consent Judgment provided under Paragraph 6.A. shall be reduced

by the ratio produced by dividing (i) the acreage of the particular Subject Lands subject to the exception by (ii) the total acreage of the Subject Lands; and

(c) any covenant(s) and/or easement grants attributable to such lands provided in Paragraphs 5.l and 5.m shall be canceled.

i. Closing Costs. The costs associated with the transfer of title, the recordation of covenants, and the associated escrow shall be paid in accordance with the customary practices in Fresno County, California. The Peck Plaintiffs shall pay one-half of the escrow fees including, if the escrow is canceled, any cancellation fees, charges and/or expenditures due the escrow company; all of the premiums charged for any owner's title policies, all documentary transfer taxes; and all of the recording charges to remove liens, encumbrances and title exceptions in accordance with this Agreement. Westlands and the United States shall each pay one-half of the following expenses: the remaining one-half of the escrow fees including, if the escrow is canceled, any cancellation fees, charges and/or expenditures due the escrow company; all the premiums charged for any lender's title policies; and all the recording costs for the Nonirrigation Covenants, the Drainage Easements, and the deeds conveying title to Westlands.

j. Environmental Assessment. For purposes of this Agreement, the term "hazardous substance" includes all substances described in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. section 9601(14)), as well as petroleum products and any derivatives thereof, including aviation fuel and motor oil, nuclear source materials, and unexploded ordnance; provided, however, that the term "hazardous substance" as used herein does not include (i) selenium, (ii) boron, (iii) any naturally occurring substance, including any salts or subsurface drainage water, resulting from past irrigation of the Subject Lands, (iv) any naturally occurring substance, including any salts or subsurface drainage water, resulting from the existence of high water tables beneath the Subject Lands, or (v) substances used in normal farming operations which have been applied pursuant to reasonable farming practices and in accordance with all applicable legal requirements.

(1) Forty-Five (45) days before the First Transfer Closing date, and ninety (90) days before any other applicable Transfer Closing date, each of the Peck Plaintiffs shall disclose in writing to Westlands any and all known or suspected releases of hazardous substances on the lands to be conveyed to Westlands at that Transfer Closing pursuant to Paragraph 5.a;

(2) No later than twenty (20) days before the First Transfer Closing date, and sixty (60) days before any other applicable Transfer Closing date, Westlands shall arrange for an environmental assessment on the Subject Lands to be conveyed at that Transfer Closing under Paragraph 5.a, which assessment will be conducted by a

qualified environmental consultant to be chosen by Westlands (the "Environmental Assessment"). The assessment shall be conducted according to the following minimum standards:

(i) Phase I of the assessment shall include (1) a review of available documents, (2) interviews with people aware of operations that have been conducted on the Property, and (3) a physical inspection of the property. Upon completion of the Phase I assessment, Westlands shall identify the properties for which there is reasonable evidence of the potential presence of hazardous substances requiring additional assessment;

(ii) Phase II of the assessment shall be conducted for properties identified by Westlands pursuant to (i) above; provided that Westlands provides prior written notice to the owner of such property of the nature, extent, and cost of such Phase II assessment, and that such owner does not provide written objections thereto with seven (7) days of such notice. Phase II of the assessment shall include (1) a more detailed review of the property, and (2) specialized physical sampling as indicated necessary from the results of Phase I. Upon completion of the Phase II assessment, Westlands shall identify the properties for which there is reasonable evidence of the presence of hazardous substances requiring additional assessment;

(iii) Phase III of the assessment shall be conducted for properties identified by Westlands pursuant to (ii) above; provided that Westlands provides prior written notice to the owner of such property of the nature, extent, and cost of such Phase III assessment, and that such owner does not provide written objections thereto with seven (7) days of such notice. The nature of the inquiries to be made in the Phase III assessment, if any, shall be determined by Westlands and the environmental consultant retained to conduct the assessment, following Westlands' analysis of the report on the Phase II assessment;

(iv) The cost of the Phase I environmental assessments shall be paid by Westlands. The cost of Phase II or Phase III environmental assessments shall be paid by each Peck Plaintiff for the assessment done on the lands owned by such

plaintiff;

(v) The Peck Plaintiffs shall reasonably cooperate with all inquiries made by the environmental consultant, and shall provide access to the Subject Lands for purposes of conducting the environmental assessments.

(vi) In the event that Westlands and the owner of lands identified by Westlands for proposed Phase II or Phase III assessment (the "Affected Lands") are unable to resolve an owner's objections to a proposed Phase II or Phase III assessment, then in its sole discretion Westlands may decline to accept transfer of title to the Affected Lands. Further, in such event, Westlands may require the owner of the Affected Lands to transfer to Westlands, through escrow, the entitlement to CVP water appurtenant to such lands, in exchange for (a) payment by Westlands of Eight Hundred Fifty Dollars (\$850) per acre, and (b) forgiveness by Westlands of Westlands' assessments and land-based charges associated with such Affected Lands.

k. Environmental Contamination. Notwithstanding any other term of this Agreement, the obligations of Westlands described herein shall not extend to lands which contain hazardous substances, active surface impoundments or surface impoundments that have been closed under the California Toxic Pits Cleanup Act of 1984, as amended (California Health and Safety Code section 25208), unless or until such lands have been cleaned up or otherwise remediated to the satisfaction of Westlands. Neither Westlands nor the United States shall have any obligation to take any action, or incur any cost or expense to clean up or otherwise remediate any lands. The approval by Westlands of the results of the Environmental Assessment and the remediation of any hazardous substances identified thereby is a condition that must be satisfied in order to close escrow at the Transfer Closing. The Peck Plaintiffs shall have a reasonable opportunity to clean up or otherwise remediate any identified hazardous substances at their expense. If, after such reasonable opportunity, the hazardous substances have not been remediated, then Westlands may decline to accept the particular Subject Lands containing hazardous substances. In the event Westlands declines to accept such particular Subject Lands:

(1) the portion of any payments attributable to such lands provided in subsection 5.b, together with interest earned thereon, shall be returned to the party or parties who deposited such funds in the escrow;

(2) Paragraph 5.a and 5.b of this Agreement shall be terminated with respect to such lands only – the terms of this Agreement shall otherwise remain in force and

effect; and

(3) any grant deed(s) attributable to such lands provided in subsection 5.a shall be canceled.

1. Nonirrigation Covenant. On the applicable Transfer Closing dates pursuant to Paragraph 5.d. and this Paragraph, after compliance by the Parties with any statutory requirements, including any requirements under the National Environmental Policy Act ("NEPA") and the California Environmental Quality Act ("CEQA"), the owners of the Subject Lands, at the United States' election, shall record a restrictive covenant (the "Nonirrigation Covenant"), in the form of **Exhibit C**, running with each parcel of the Subject Lands listed in this subparagraph, below, that the United States may designate, and enforceable by the United States, covering all of the Subject Lands listed in this subparagraph, below, that the United States may designate, which Nonirrigation Covenant shall prohibit irrigation from any source, including groundwater pumped locally, for agricultural purposes or any other purpose except as necessary to restore the lands to native upland habitat; provided, however, that Westlands may construct, operate or maintain groundwater wells on the Subject Lands for the purpose of extracting groundwater for beneficial use on lands other than the Subject Lands, subject to the provisions of Sections 5(n) below. In the event the United States or Westlands reasonably requires an extension of time to complete statutory requirements, including any requirements under the National Environmental Policy Act ("NEPA") or the California Environmental Quality Act ("CEQA") before the United States makes its elections and designations under this subparagraph, the Parties shall not withhold their consent to such extension and a separate closing ("Nonirrigation Covenant closing") shall be arranged for the recordation of the Nonirrigation Covenants. Before the Nonirrigation Covenant closing takes place, except as specifically provided for in this Agreement, neither Westlands nor the Peck Plaintiffs shall dispose of any Subject Lands, or cause or allow any other alteration of their respective interest in, or title to Subject Lands that might impair the ability of Westlands or the Peck Plaintiffs to record valid Nonirrigation Covenants under this paragraph that are enforceable by the United States.

(1) Nonirrigation Covenants will not be recorded at the First Transfer Closing;

(2) Nonirrigation Covenants are to be recorded for lands described in **Exhibit A2** (approximately 10,804 acres) at the Second Transfer Closing;

(3) Nonirrigation Covenants are to be recorded for lands described in **Exhibit A3** (approximately 10,547 acres) at the Third Transfer Closing;

(4) Nonirrigation Covenants are to be recorded for lands described in **Exhibit A4** (approximately 11,061 acres) at the Fourth Transfer Closing.

Notwithstanding any other provision contained herein, a Nonirrigation Covenant shall not

be entered or recorded for any Subject Lands that are subject to a Land Use Agreement until such time that the Land Use Agreement for such Subject Lands has terminated, provided that the duration of such Land Use Agreements shall not extend beyond the crop-year in which the Transfer Closing occurs.

m. Drainage Easement. On the applicable Transfer Closing dates provided in Paragraph 5.d, above, prior to the conveyance of any lands to Westlands under Paragraph 5.a, the Peck Plaintiffs shall convey to the United States and Westlands an easement (the "Drainage Easement"), in the form of **Exhibit H**, acceptable to the United States and Westlands, running with each parcel of the Covered Lands listed in this subparagraph, below, and enforceable by Westlands and by the United States, covering all of the Covered Lands listed in this subparagraph, below, which Drainage Easement shall preclude the owner and the possessor of the Covered Lands and their successors from asserting any equitable or legal claims against the United States or Westlands arising from the lack of drainage service to the land.

(1) Drainage Easements are to be conveyed concerning the lands described in **Exhibit A1** (approximately 1,688 acres) at the First Transfer Closing;

(2) Drainage Easements are to be conveyed concerning the lands described in **Exhibit A2** (approximately 10,804 acres) at the Second Transfer Closing;

(3) Drainage Easements are to be conveyed concerning the lands described in **Exhibit A3** (approximately 10,547 acres) at the Third Transfer Closing;

(4) Drainage Easements are to be conveyed concerning the lands described in **Exhibit A4** (approximately 11,061 acres) at the Fourth Transfer Closing.

n. CVP Water. The retirement of lands from irrigated agricultural production pursuant to this Agreement shall not affect the quantity of CVP water made available to Westlands under its existing CVP water service contract or any future renewals thereof so long as the CVP water to be made available pursuant to its existing water service contract or any future renewals thereof can be put to reasonable and beneficial use on lands within the Westlands' boundaries that remain in agricultural production.

(1) CVP water appurtenant to Subject Lands for which Nonirrigation Covenants are recorded and/or Drainage Easements are conveyed under this Agreement shall not be used in a manner that results in the conversion of natural habitats or detrimental impacts to wildlife or native plants, including Federally listed threatened or endangered species, within Westlands' boundaries without appropriate mitigation pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. section 1531, et seq.), and other applicable law. This limitation is not intended to impose on Westlands or its landowners any obligation that does not presently exist

to mitigate impacts resulting from the use of CVP water on lands cultivated prior to the date of this Agreement.

(2) CVP water appurtenant to Subject Lands for which recordation of covenants Nonirrigation Covenants are recorded and/or Drainage Easements are conveyed under this Agreement shall not be transferred, exchanged, or otherwise sold outside of Westlands' boundaries, nor used on lands that are within the area cross-hatched on the map attached hereto as **Exhibit D**. The boundaries of the area cross-hatched on **Exhibit D** to this Agreement may be adjusted, or specific exceptions within the area may be made, upon a determination by Westlands with the concurrence of the United States Bureau of Reclamation (the "Bureau") that such adjustment or exception will not cause, contribute to, or exacerbate existing or future drainage problems. Any adjustment or exception to the area depicted on **Exhibit D** will be based on physical factors affecting the current or future need for drainage service including Natural Resource Conservation Service ("NRCS") soil associations, trends in groundwater levels, hydraulic conductivities, geohydrology and shallow groundwater quality. At a minimum, modifications or exceptions to the depicted area shall meet the following criteria: (i) NRCS soil classification moderate to well drained; (ii) shallow groundwater levels greater than ten feet; (ii) water tables stable or declining within a one mile radius for at least the previous ten years; and (iv) shallow groundwater salinity equal to or less than 12 dS/m and selenium equal to or less than 2 parts per billion.

o. Westlands Repayment Obligations. The Parties recognize that Westlands has an obligation under Exhibit "K" of the *Barcellos* Judgment and under the Contract Between the United States and Westlands Water District dated April 1, 1965, for the construction and repayment of the costs of the distribution and drainage collector system (the "Repayment Obligation"). The United States, by making an appropriate payment to Westlands or affording Westlands an appropriate credit, shall relieve Westlands of that portion of the Repayment Obligation that under Reclamation law and contract is attributable to any lands conveyed to Westlands pursuant to this Agreement, or to any lands declined by Westlands under Paragraph 5.j(2)(vi).

p. Nonreimbursability. Westlands shall not pay either directly or indirectly the United States' costs associated with its implementation of this Agreement, provided that the United States may at its discretion use money in the CVPIA restoration fund for its implementation.

q. Obligation to Provide Drainage Service. Nothing contained in this Agreement is intended by Westlands or the United States to affect the duty imposed on the Secretary of the Interior by Section 1(a) of the San Luis Act, Public Law 86-488, 74 Stat. 156, to provide drainage service to lands other than Covered Lands, or the discretion granted to the Secretary by Section 5 of the Act. Nor is anything contained in this Agreement intended to affect the Secretary's discretion in selecting the means by which drainage service will be provided.



r. No Supplemental or Additional Benefit. Neither this Agreement, nor any action taken by the Parties in carrying out its provisions, is deemed by the Parties to subject Westlands to the discretionary provisions of the Reclamation Reform Act of 1982, because this Agreement neither constitutes a new water service contract or repayment contract between the United States and Westlands or an amendment of the existing water service contract or the existing repayment contract between the United States and Westlands; nor does this Agreement confer on Westlands any "new and supplemental benefits," as that term is used in the Reclamation Reform Act of 1982, Public Law 97-293, 96 Stat. 1263.

s. NEPA and Other Statutory Prerequisites. Nothing in this Agreement shall be construed to conflict with any obligation of the United States or Westlands to comply with applicable legal requirements, including applicable requirements under the NEPA, the CEQA, and/or the Endangered Species Act, if any.

t. Refund of Binding Agreement Trusts Funds. Not later than five (5) days after entry of the Consent Judgment provided in Paragraph 6.A., below, Westlands shall cause to be refunded to its water users all funds, together with interest accrued thereon, contained in the Binding Agreement Trusts, which are trusts created by Westlands relating to Binding Agreement Nos. 14-06-200-495A-BA, dated September 30, 1997, or CV 79-106-EDP-BA, dated September 30, 1997. Nothing in this Agreement is intended to affect any obligation or right under such Binding Agreements.

6. Consent Judgment and Consent Order.

A. The Parties agree that upon execution of this Agreement, the Peck Plaintiffs and the United States shall file in the District Court in this Lawsuit a joint motion, attached hereto as **Exhibit E**, for entry of a consent judgment, attached hereto as **Exhibit F** (the "Consent Judgment"), containing the terms and conditions provided in Paragraphs 6.A(1) through 6.A(4). The Peck Plaintiffs acknowledge that the Federal Defendants' obligations under the Consent Judgment are contingent upon the appropriation of funds by Congress that are available for this purpose. The Peck Plaintiffs further acknowledge that the federal defendants have taken the position, over the objection of the Peck Plaintiffs, that the judgment appropriation under 31 U.S.C. §1304 is not available for satisfaction of the Consent Judgment. However, in the event the Federal Defendants fail to satisfy this Consent Judgment, nothing in this Agreement shall be construed to be a waiver by Peck Plaintiffs or the Federal Defendants of any claims or defenses they may have concerning the source of funds for the satisfaction of the Consent Judgment.

(1) The Peck Plaintiffs and the United States agree that judgment by way of compromise and settlement shall be entered, pursuant to this Agreement, in favor of the Peck Plaintiffs and against the United States; contingent upon the appropriation of funds by Congress that are available for this purpose; and to be paid in installments, according to the schedule provided below, on the applicable Transfer Closing dates provided in Paragraph

5.d, and subject to Paragraph 5.h.(2):

(a) Five Million Dollars (\$5,000,000) shall be paid at the First Transfer Closing;

(b) In the event that payment by the United States to the Peck Plaintiffs is made under this Consent Judgment during federal fiscal year 2003, in an amount which, in combination with the payments made earlier under this Consent Judgment, is not less than Ninety-nine Million, Nine Hundred Thousand Dollars (\$99,900,000.00), then the Parties agree that such payment shall fully satisfy this Consent Judgment and fully discharge the Federal Defendants' obligations under this Consent Judgment;

(c) In the event that payment is not made as provided in Paragraph 6.A(1)(b), then a payment shall be made at the Second Transfer Closing in an amount which, in combination with the payments made earlier under this Consent Judgment, equals Thirty-nine Million Dollars (\$39,000,000.00);

(d) In the event that payment by the United States to the Peck plaintiffs is made under this Consent Judgment during federal fiscal year 2004, in an amount which, in combination with the payments made earlier under this Consent Judgment, is not less than One Hundred Three Million, Four Hundred Fifty Thousand Dollars (\$103,450,000.00), then the Parties agree that such payment shall fully satisfy this Consent Judgment and fully discharge the Federal Defendants' obligations under this Consent Judgment;

(e) In the event that payment is not made as provided in Paragraph 6.A(1)(b) or 6.A(1)(d), then:

(i) a payment shall be made at the Third Transfer Closing in an amount which, in combination with the payments made earlier under this Consent Judgment, equals Seventy-three Million Dollars (\$73,000,000.00); and

(ii) a payment shall be made at the Fourth Transfer Closing in an amount which, in combination with the payments made earlier under this Consent Judgment, equals One Hundred Seven Million dollars (\$107,000,000.00);

(2) Federal Defendants shall use their best efforts to secure the appropriation of funds by Congress to satisfy this Consent Judgment. Federal Defendants acknowledge that funds are presently available to make the payment provided under Paragraph 6.A(1)(a). Nothing in this Consent Judgment, or in the Settlement Agreement pursuant to which it is

entered, shall be deemed to limit the authority of the President to make recommendations to Congress on any particular piece of legislation;

(3) The entry and satisfaction of this Consent Judgment shall constitute a full, complete and final resolution of any and all legal and equitable claims, demands, rights or causes of action for damages or other monetary relief that either have been asserted by the Peck Plaintiffs against the Federal Defendants in the Lawsuit or the Court of Federal Claims Lawsuit, or that might have been asserted by the Peck Plaintiffs against the Federal Defendants arising out of the facts alleged in, or relating to the subject matter of, the Lawsuit or the Court of Federal Claims Lawsuit.

(4) Each Party shall bear its own costs and fees, except that the payments provided in Paragraph 6.A(1), and payments made previously by the United States to the Peck Plaintiffs in this Litigation, provide full payment by the United States in compromise of the Peck Plaintiffs' claims for attorney fees and costs.

B. The Parties agree that upon execution of this Agreement, Westlands and the United States shall file in the District Court in this Lawsuit, a joint motion, attached hereto as **Exhibit X**, for entry of the proposed Consent Order attached hereto as **Exhibit Y**, concerning the Settlement Agreement and the orders, partial judgments, and/or decrees affected by the District Court's order entered December 18, 2000, as subsequently modified by the District Court.

7. Peck Plaintiffs' Voluntary Dismissal With Prejudice and Release.

A. Except as provided in Paragraph 6.A, the Peck Plaintiffs shall voluntarily dismiss with prejudice the Peck Claims, and each Party shall bear its own costs and fees. Accordingly, upon entry by the District Court of the Consent Judgment provided in Paragraph 6.A., above, the Parties shall execute and file in the District Court the Stipulation of Voluntary Dismissal Upon Settlement, attached hereto as **Exhibit G**, and the Peck Plaintiffs and the United States shall execute and file in the United States Court of Federal Claims the Stipulation of Voluntary Dismissal Upon Settlement attached hereto as **Exhibit G1**. Pursuant to this Agreement, the Peck Plaintiffs release, waive, and abandon any and all claims, demands, rights, or causes of action which they have asserted, or could have asserted, against the United States and/or Westlands in the Lawsuit or the Court of Federal Claims Lawsuit arising out of facts alleged in, or relating to the subject matter of, the Lawsuit or the Court of Federal Claims Lawsuit.

B. Each of the Peck Plaintiffs has been advised by counsel regarding, and hereby expressly waives, any protection or benefit provided by California Civil Code section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

8. Westlands' Voluntary Dismissals and Mutual Releases.

A. Westlands shall voluntarily dismiss with prejudice the Westlands Counterclaims. Westlands and the Peck Plaintiffs shall each bear their own costs and fees related to the Counterclaims.

B. Westlands shall voluntarily dismiss with prejudice its Cross-claims to the extent that they relate either to the Peck Claims and the Covered Lands, or to the claims and lands of the plaintiffs that are the subject of the settlement filed with the District Court on September 17, 2002 (the "Britz Settlement"), including the First Claim for Relief in its Cross-claim. Westlands shall voluntarily dismiss without prejudice the remainder of its Cross-claims, including the following cross-claims to the extent they do not relate either to the Peck Claims and the Covered Lands, or to the claims and lands that are the subject of the Britz Settlement: the Second, Third, Fourth, Fifth and Sixth Claims for Relief in its Cross-claim. Westlands agrees that the Seventh Claim for Relief in its Cross-claim is merged with the partial judgment entered on March 12, 1995, as modified by the District Court's December 18, 2000 order and subsequent orders, and as the United States and Westlands pursuant to Paragraph 6.B will jointly move for entry of a consent order relating to that partial judgment. Westlands and the United States shall each bear their own costs and fees related to the Cross-claims. Accordingly, upon entry by the District Court of the Consent Judgment provided in Paragraph 6.A., above, the Parties shall execute and file in the District Court the Stipulation of Voluntary Dismissal Upon Settlement, attached hereto as **Exhibit G**.

C. Pursuant to this Agreement, Westlands and the United States each release, waive, and abandon any and all claims, demands, rights, or causes of action which either has asserted, or could have asserted in this Lawsuit against the Peck Plaintiffs, or against each other, related to the Peck Claims and the Covered Lands.

D. Each of the United States and Westlands has been advised by counsel regarding, and hereby expressly waives, any protection or benefit provided by California Civil Code section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

9. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given when delivered by U.S. mail, registered or certified, return receipt requested, postage prepaid, or by overnight delivery service showing receipt of delivery, or by personal delivery, or by facsimile transmission, to the Parties' representatives listed below. Notice shall be effective upon the earlier of actual receipt, or twenty-four (24) hours after deposit with the messenger or delivery service, or the next business day after delivery to an overnight delivery service, or within three (3) days after the deposit in the U.S. mail, or upon confirmation of transmission by facsimile.

To Peck Plaintiffs:

Each Peck Plaintiff Family (identified, and at the address, set forth on Schedule 1)  
With a Copy to:

Attn: William M. Smiland  
Smiland & Khachigian  
601 West Fifth Street  
Suite 700  
Los Angeles, CA 90071

To Westlands:

Attn: Daniel J. O'Hanlon  
Kronick, Moskovitz, Tiedemann & Girard  
400 Capitol Mall, 27th Floor  
Sacramento, CA 95814

With a Copy to:

Attn: Thomas Birmingham  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 95703

To United States:

Kirk Rodgers  
Regional Director  
Mid-Pacific Region  
Bureau of Reclamation  
Department of the Interior  
2800 Cottage Way, Room E-1604  
Sacramento, CA 95825

With Copies To:

William Luce  
Area Manager  
South-Central California Area Office  
Mid-Pacific Region

Bureau of Reclamation  
Department of the Interior  
1243 "N" Street  
Fresno, CA 93721-1813

Maria A. Iizuka, Esq.  
Environment and Natural Resource Division  
U. S. Department of Justice  
501 "T" Street, Suite 9-700  
Sacramento, CA 95814

Yoshinori H.T. Himel, Esq.  
Assistant United States Attorney  
Eastern District of California  
501 "T" Street, Suite 10-100  
Sacramento, CA 95814

Barbara Geigle, Esq.  
Assistant Solicitor  
Division of Land and Water  
Office of the Solicitor  
Department of the Interior  
1849-C NW MS6412  
Washington, DC 20240

James E. Turner, Esq.  
Assistant Regional Solicitor  
Pacific Southwest Region  
Department of Interior  
2800 Cottage Way, Room E-1712  
Sacramento, CA 95825

10. Execution. This Agreement may be executed in counterparts. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. This Agreement is executed as follows:

UNITED STATES OF AMERICA

By: \_\_\_\_\_  
KIRK RODGERS  
Regional Director

Mid-Pacific Region  
Bureau of Reclamation  
Department of Interior

APPROVED AS TO FORM:

By: \_\_\_\_\_  
MARIA A. IIZUKA, ESQ.  
Environment and Natural Resource Division  
U. S. Department of Justice  
501 "T" Street, Suite 9-700  
Sacramento, CA 95814

By: \_\_\_\_\_  
YOSHINORI H. T. HIMEL, ESQ.  
Assistant United States Attorney  
501 "T" Street, Suite 10-100  
Sacramento, CA 95814

WESTLANDS WATER DISTRICT

By: \_\_\_\_\_  
THOMAS BIRMINGHAM  
General Manager/General Counsel  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 95703

APPROVED AS TO FORM:

By: \_\_\_\_\_  
DANIEL J. O'HANLON, ESQ.  
Kronick, Moskovitz, Tiedemann & Girard

12/11/02 15:18 FAX 816 930 0010  
12/05/02 18:23 FAX 703 418  
12/05/02 18:18 FAX 816 930

US D.O.J./ENRD/GENLIT  
PENTAGON CITY RI  
US D.O.J./ENRD/GENLIT

002/003  
003  
003

Bureau of Reclamation  
Department of the Interior  
1243 "N" Street  
Fresno, CA 93721-1813

Maria A. Gzuka, Esq.  
Environment and Natural Resource Division  
U. S. Department of Justice  
501 "I" Street, Suite 9-700  
Sacramento, CA 95814


Yoshinori H.T. Himel, Esq.  
Assistant United States Attorney  
Eastern District of California  
501 "I" Street, Suite 10-100  
Sacramento, CA 95814

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Assistant Solicitor  
Division of Land and Water  
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1849-C NW MS6412  
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By:   
KIRK RODGERS  
Regional Director



Department of Interior

APPROVED AS TO FORM:

By: Maria A. Iizuka  
MARIA A. IIZUKA, ESQ.  
Environment and Natural Resource Division  
U. S. Department of Justice  
501 "I" Street, Suite 9-700  
Sacramento, CA 95814

By: Yoshinori H. T. Himel  
YOSHINORI H. T. HIMEL, ESQ.  
Assistant United States Attorney  
501 "I" Street, Suite 10-100  
Sacramento, CA 95814

WESTLANDS WATER DISTRICT

By: \_\_\_\_\_  
THOMAS BIRMINGHAM  
General Manager/General Counsel  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 95703

APPROVED AS TO FORM:

By: \_\_\_\_\_  
DANIEL J. O'HANLON, ESQ.  
Kronick, Moskovitz, Tiedemann & Girard  
400 Capitol Mall, 27th Floor  
Sacramento, CA 95814-4417

APPROVED AS TO FORM:

By: MARIA A. IZUKA, ESQ.  
Environment and Natural Resource Division  
U. S. Department of Justice  
501 "T" Street, Suite 9-700  
Sacramento, CA 95814

By: YOSHINORI H. T. HIMEL, ESQ.  
Assistant United States Attorney  
501 "T" Street, Suite 10-100  
Sacramento, CA 95814

WESTLANDS WATER DISTRICT

By: Thomas W. Birmingham  
THOMAS BIRMINGHAM  
General Manager/General Counsel  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 95703

APPROVED AS TO FORM:

By: Daniel J. O'Hanlon  
DANIEL J. O'HANLON, ESQ.  
Kronick, Moskovitz, Tiedemann & Girard  
400 Capitol Mall, 27th Floor  
Sacramento, CA 95814-4417

400 Capitol Mall, 27th Floor  
Sacramento, CA 95814-4417

PECK PLAINTIFFS

APPROVED AS TO FORM:

By:   
THEODORE A. CHESTER, JR., ESQ.  
Smiland & Khachigian  
601 West Fifth Street  
Suite 700  
Los Angeles, CA 90071

PECK PLAINTIFFS

---

A.D. Allen Family

Arvid D. Allen  
Arvid D. Allen

Mary J. Allen  
Mary J. Allen

Kristy Brinkley  
Kristy Brinkley

Greg Brinkley  
Greg Brinkley

Gwendolyn F. Benton  
Gwendolyn F. Benton

Shauna B. Diaz  
Shauna Diaz

Mark Diaz  
Mark Diaz

Gwendolyn F. Benton Survivor's Trust

By Gwendolyn F. Benton  
Gwendolyn F. Benton, Trustee

Benton Bypass Trust

By Gwendolyn F. Benton  
Gwendolyn F. Benton, Trustee

Arvid D. Allen and Mary J. Allen Living Trust

By Kristy Brinkley  
Kristy Brinkley, Trustee

By Shauna B. Diaz  
Shauna Diaz, Trustee

A.E. Allen Family

A. E. Allen 12-02-02

A. E. Allen

Cynthia Allen Best

Cynthia Allen Best

John K. Allen

Denise C. Allen

Joel P. Allen 12-02-02

Joel P. Allen

LaVonne R. Allen 12-02-02

LaVonne R. Allen

A.E. Allen Family

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A. E. Allen

---

Cynthia Allen Best

*JK all 12/02/02*  

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John K. Allen

*Denise C Allen 12/02/02*  

---

Denise C. Allen

---

Joel P. Allen

---

LaVonne R. Allen

Etcheberry Family

Estate of Helen Etcheberry

By Janet Lynn Ballinger, Trustee  
Janet Lynn Ballinger, Trustee

Guenther Family

Richard E. Guenther

Richard E. Guenther

Patricia A. Guenther

Patricia A. Guenther

Theodora C. Guenther

By Richard E. Guenther, Trustee

Theodora C. Guenther, Decased By: Richard E. Guenther Executor

Guenther Farms I, a California general partnership

By Richard E. Guenther, Partner

Richard E. Guenther, Partner

Guenther Farms II, a California general partnership

By Richard E. Guenther, Partner

Richard E. Guenther, Partner

Guenther Farms III, a California general partnership

By Richard E. Guenther, Partner

Richard E. Guenther, Partner

Guenther Family Trust

By Richard E. Guenther

Richard E. Guenther, Trustee

By Patricia A. Guenther

Patricia A. Guenther, Trustee



**Jones Family**

Jones-Villere Farms, a California general partnership

By <u>Ronald C. Jones, Partner</u>	By <u>Maurine A. Jones</u> Maurine A. Jones, Partner
By <u>Kathryn Ortega Jones, Partner</u>	By <u>Plauche F. Villere, Jr., Partner</u>
By <u>William L. Jones, Partner</u>	By <u>Susan Jones Villere, Partner</u>

Llanada Farms, a California general partnership

By <u>Ronald C. Jones, Partner</u>	By <u>Maurine A. Jones</u> Maurine A. Jones, Partner
By <u>Kathryn Ortega Jones, Partner</u>	By <u>Plauche F. Villere, Jr., Partner</u>
By <u>William L. Jones, Partner</u>	By <u>Susan Jones Villere, Partner</u>

Sarek Farms, a California general partnership

By <u>Ronald C. Jones, Partner</u>	By <u>Maurine A. Jones</u> Maurine A. Jones, Partner
By <u>Kathryn Ortega Jones, Partner</u>	By <u>Plauche F. Villere, Jr., Partner</u>
By <u>William L. Jones, Partner</u>	By <u>Susan Jones Villere, Partner</u>

Western Farms LP

By \_\_\_\_\_,  
\_\_\_\_\_, Partner

**Jones Family**

Jones-Villere Farms, a California general partnership

By Ronald C. Jones, Partner	By Maurine A. Jones, Partner
By Kathryn Ortega Jones, Partner	By Plauche F. Villere, Jr., Partner
By William L. Jones, Partner	By Susan Jones Villere, Partner

Llanada Farms, a California general partnership

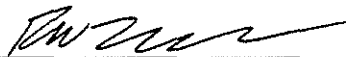
By Ronald C. Jones, Partner	By Maurine A. Jones, Partner
By Kathryn Ortega Jones, Partner	By Plauche F. Villere, Jr., Partner
By William L. Jones, Partner	By Susan Jones Villere, Partner

Sarek Farms, a California general partnership


By Ronald C. Jones, Partner	By Maurine A. Jones, Partner
By Kathryn Ortega Jones, Partner	By Plauche F. Villere, Jr., Partner
By William L. Jones, Partner	By Susan Jones Villere, Partner

Western Farms, L.P.

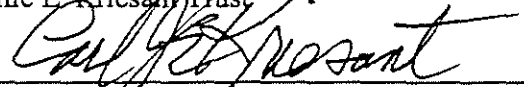
By: U.S. Filter Farms GP, Inc., its General Partner

By:   
Frederick W. Noble, Jr., Vice President


Kriesant Family

  
\_\_\_\_\_  
Carl J. E. Kriesant

Jennie L. Kriesant Trust

By   
\_\_\_\_\_  
Carl J. E. Kriesant, Trustee

Kriesant Operating Company, Inc. a California corporation

By   
\_\_\_\_\_  
Carl W. Kriesant, President

O'Neill Family

Edith J. Carroll 1986 Trust

By Edith J. Carroll, Trustee  
Edith J. Carroll, Trustee

Edith J. Carroll 1995 Revocable Trust

By Edith J. Carroll, Trustee  
Edith J. Carroll, Trustee

\_\_\_\_\_  
Blake R. O'Neill

\_\_\_\_\_  
Brian T. O'Neill

Shannon L. O'Neill  
Shannon L. O'Neill

Carroll/O'Neill, LP

By Shannon L. O'Neill  
Shannon L. O'Neill, Partner

J.E. O'Neill, Inc., a California corporation

By Lee R. Schultz  
Lee R. Schultz, President

O'Neill, Ltd., a California corporation

By Edwin R. O'Neill, pres  
Edwin R. O'Neill, President

(Signed in individual capacities and not as representatives in the  
Barcellos or Sagouspe cases)

O'Neill Family

Edith J. Carroll 1986 Trust

By \_\_\_\_\_  
Edith J. Carroll, Trustee

Edith J. Carroll 1995 Revocable Trust

By \_\_\_\_\_  
Edith J. Carroll, Trustee

\_\_\_\_\_  
Blake R. O'Neill

Brian T. O'Neill  
\_\_\_\_\_  
Brian T. O'Neill

\_\_\_\_\_  
Shannon L. O'Neill

Carroll/O'Neill, LP

By \_\_\_\_\_  
Shannon L. O'Neill, Partner

J.E. O'Neill, Inc., a California corporation

By Lee R. Schultz  
\_\_\_\_\_  
Lee R. Schultz, President

O'Neill, Ltd., a California corporation

By Edwin R. O'Neill, pres  
\_\_\_\_\_  
Edwin R. O'Neill, President

(Signed in individual capacities and not as representatives in the  
Barcellos or Sagouspe cases)


O'Neill Family

Edith J. Carroll 1986 Trust

By \_\_\_\_\_  
Edith J. Carroll, Trustee

Edith J. Carroll 1995 Revocable Trust

By \_\_\_\_\_  
Edith J. Carroll, Trustee

  
\_\_\_\_\_  
Blake R. O'Neill

\_\_\_\_\_  
Brian T. O'Neill

\_\_\_\_\_  
Shannon L. O'Neill

Carroll/O'Neill, LP

By \_\_\_\_\_  
Shannon L. O'Neill, Partner

J.E. O'Neill, Inc., a California corporation

By   
\_\_\_\_\_  
Lee R. Schultz, President

O'Neill, Ltd., a California corporation

By   
\_\_\_\_\_  
Edwin R. O'Neill, President

(Signed in individual capacities and not as representatives in the  
Barcellos or Sagouspe cases)

O'Neill Farming Enterprises, Inc., a California corporation

By Edwin R. O'Neill, pres  
Edwin R. O'Neill, President

Humboldt Ranches (pka BRO Partnership) a California general partnership

By Edwin R. O'Neill, partner By \_\_\_\_\_  
Edwin R. O'Neill, Partner Shannon L. Stubblefield, Partner

By \_\_\_\_\_ By Lee R. Schultz  
Kristan J. O'Neill, Partner Lee R. Schultz, Partner

By Brian T. O'Neill By Harold E. Blackwell  
Brian T. O'Neill, Partner Harold E. Blackwell, Partner

By \_\_\_\_\_ Edith J. Carroll, Inc., Partner  
Blake R. O'Neill, Partner  
By \_\_\_\_\_  
Edith J. Carroll, President

Laguna Farms (pka BTO Partnership) a California general partnership

By Edwin R. O'Neill, partner By \_\_\_\_\_  
Edwin R. O'Neill, Partner Shannon L. Stubblefield, Partner

By \_\_\_\_\_ By Lee R. Schultz  
Kristan J. O'Neill, Partner Lee R. Schultz, Partner

By Brian T. O'Neill By Harold E. Blackwell  
Brian T. O'Neill, Partner Harold E. Blackwell, Partner

By \_\_\_\_\_ Edith J. Carroll, Inc., Partner  
Blake R. O'Neill, Partner  
By \_\_\_\_\_  
Edith J. Carroll, President

(Signed in individual capacities and not as representatives in the  
Barcellos or Sagouspe cases)

O'Neill Farming Enterprises, Inc., a California corporation

By Edwin R. O'Neill, pres  
Edwin R. O'Neill, President

Humboldt Ranches (pka BRO Partnership) a California general partnership

By Edwin R. O'Neill, partner  
Edwin R. O'Neill, Partner

By Shannon L. Stubblefield  
Shannon L. Stubblefield, Partner

By Kristan J. O'Neill  
Kristan J. O'Neill, Partner

By Lee R. Schultz  
Lee R. Schultz, Partner

By \_\_\_\_\_  
Brian T. O'Neill, Partner

By Harold E. Blackwell  
Harold E. Blackwell, Partner

By \_\_\_\_\_  
Blake R. O'Neill, Partner

Edith J. Carroll, Inc., Partner

By Edith J. Carroll Pres  
Edith J. Carroll, President

Laguna Farms (pka BTO Partnership) a California general partnership

By Edwin R. O'Neill, partner  
Edwin R. O'Neill, Partner

By Shannon L. Stubblefield  
Shannon L. Stubblefield, Partner

By Kristan J. O'Neill  
Kristan J. O'Neill, Partner

By Lee R. Schultz  
Lee R. Schultz, Partner

By \_\_\_\_\_  
Brian T. O'Neill, Partner

By Harold E. Blackwell  
Harold E. Blackwell, Partner

By \_\_\_\_\_  
Blake R. O'Neill, Partner

Edith J. Carroll, Inc., Partner

By Edith J. Carroll Pres  
Edith J. Carroll, President

(Signed in individual capacities and not as representatives in the  
Barcellos or Sagouspe cases)



O'Neill Farming Enterprises, Inc., a California corporation

By Edwin R. O'Neill, pres  
Edwin R. O'Neill, President

Humboldt Ranches (pka BRO Partnership) a California general partnership

By Edwin R. O'Neill, partner By \_\_\_\_\_  
Edwin R. O'Neill, Partner Shannon L. Stubblefield, Partner

By \_\_\_\_\_ By Lee R. Schultz  
Kristan J. O'Neill, Partner Lee R. Schultz, Partner

By \_\_\_\_\_ By Harold E. Blackwell  
Brian T. O'Neill, Partner Harold E. Blackwell, Partner

By Blake R. O'Neill Edith J. Carroll, Inc., Partner  
Blake R. O'Neill, Partner  
By \_\_\_\_\_  
Edith J. Carroll, President

Laguna Farms (pka BTO Partnership) a California general partnership

By Edwin R. O'Neill, partner By \_\_\_\_\_  
Edwin R. O'Neill, Partner Shannon L. Stubblefield, Partner

By \_\_\_\_\_ By Lee R. Schultz  
Kristan J. O'Neill, Partner Lee R. Schultz, Partner

By \_\_\_\_\_ By Harold E. Blackwell  
Brian T. O'Neill, Partner Harold E. Blackwell, Partner

By Blake R. O'Neill Edith J. Carroll, Inc., Partner  
Blake R. O'Neill, Partner  
By \_\_\_\_\_  
Edith J. Carroll, President

(Signed in individual capacities and not as representatives of the  
Barcellos or Sagouspe cases)

Trinity Farms (pka EJC Partnership) a California general partnership

By Edwin R. O'Neill, partner  
Edwin R. O'Neill, Partner

By Kristan J. O'Neill  
Kristan J. O'Neill, Partner

By \_\_\_\_\_  
Brian T. O'Neill, Partner

By \_\_\_\_\_  
Blake R. O'Neill, Partner

By Shannon L. Stubblefield  
Shannon L. Stubblefield, Partner

By Lee R. Schultz  
Lee R. Schultz, Partner

By Harold E. Blackwell  
Harold E. Blackwell, Partner

Edith J. Carroll, Inc., Partner

By Edith J. Carroll Pres.  
Edith J. Carroll, President

145 Farms (pka ERO Partnership) a California general partnership

By Edwin R. O'Neill, partner  
Edwin R. O'Neill, Partner

By Kristan J. O'Neill  
Kristan J. O'Neill, Partner

By \_\_\_\_\_  
Brian T. O'Neill, Partner

By \_\_\_\_\_  
Blake R. O'Neill, Partner

By Shannon L. Stubblefield  
Shannon L. Stubblefield, Partner

By Lee R. Schultz  
Lee R. Schultz, Partner

By Harold E. Blackwell  
Harold E. Blackwell, Partner

Edith J. Carroll, Inc., Partner

By Edith J. Carroll Pres.  
Edith J. Carroll, President

(Signed in individual capacities and not as representatives in the  
Barcellos or Sagouspe cases)

Trinity Farms (pka EJC Partnership) a California general partnership

By Edwin R. O'Neill, partner  
Edwin R. O'Neill, Partner

By \_\_\_\_\_  
Shannon L. Stubblefield, Partner

By \_\_\_\_\_  
Kristan J. O'Neill, Partner

By Lee R. Schultz  
Lee R. Schultz, Partner

By \_\_\_\_\_  
Brian T. O'Neill, Partner

By Harold E. Blackwell  
Harold E. Blackwell, Partner

By Blake R. O'Neill  
Blake R. O'Neill, Partner

Edith J. Carroll, Inc., Partner

By \_\_\_\_\_  
Edith J. Carroll, President

145 Farms (pka ERO Partnership) a California general partnership

By Edwin R. O'Neill, partner  
Edwin R. O'Neill, Partner

By \_\_\_\_\_  
Shannon L. Stubblefield, Partner

By \_\_\_\_\_  
Kristan J. O'Neill, Partner

By Lee R. Schultz  
Lee R. Schultz, Partner

By \_\_\_\_\_  
Brian T. O'Neill, Partner

By Harold E. Blackwell  
Harold E. Blackwell, Partner

By Blake R. O'Neill  
Blake R. O'Neill, Partner

Edith J. Carroll, Inc., Partner

By \_\_\_\_\_  
Edith J. Carroll, President

(Signed in individual capacities and not as representatives in the  
Barcellos or Sagouspe cases)

Trinity Farms (pka EJC Partnership) a California general partnership

By Edwin R. O'Neill, partner  
Edwin R. O'Neill, Partner

By \_\_\_\_\_  
Shannon L. Stubblefield, Partner

By \_\_\_\_\_  
Kristan J. O'Neill, Partner

By Lee R. Schultz  
Lee R. Schultz, Partner

By Brian T. O'Neill  
Brian T. O'Neill, Partner

By Harold E. Blackwell  
Harold E. Blackwell, Partner

By \_\_\_\_\_  
Blake R. O'Neill, Partner

Edith J. Carroll, Inc., Partner

By \_\_\_\_\_  
Edith J. Carroll, President

145 Farms (pka ERO Partnership) a California general partnership

By Edwin R. O'Neill, partner  
Edwin R. O'Neill, Partner

By \_\_\_\_\_  
Shannon L. Stubblefield, Partner

By \_\_\_\_\_  
Kristan J. O'Neill, Partner

By Lee R. Schultz  
Lee R. Schultz, Partner

By Brian T. O'Neill  
Brian T. O'Neill, Partner

By Harold E. Blackwell  
Harold E. Blackwell, Partner

By \_\_\_\_\_  
Blake R. O'Neill, Partner

Edith J. Carroll, Inc., Partner

By \_\_\_\_\_  
Edith J. Carroll, President

(Signed in individual capacities and not as representatives in the  
Barcellos or Sagouspe cases)

Excelsior Farms (pka JEO Partnership) a California general partnership

By <u>Edwin R. O'Neill, partner</u> Edwin R. O'Neill, Partner	By <u>Shannon L. Stubblefield</u> Shannon L. Stubblefield, Partner
By <u>Kristan J. O'Neill</u> Kristan J. O'Neill, Partner	By <u>Lee R. Schultz</u> Lee R. Schultz, Partner
By _____ Brian T. O'Neill, Partner	By <u>Harold E. Blackwell</u> Harold E. Blackwell, Partner
By _____ Blake R. O'Neill, Partner	Edith J. Carroll, Inc., Partner
	By <u>Edith J. Carroll Pres.</u> Edith J. Carroll, President

La Paloma Farms (pka SLO Partnership) a California general partnership

By <u>Edwin R. O'Neill, partner</u> Edwin R. O'Neill, Partner	By <u>Shannon L. Stubblefield</u> Shannon L. Stubblefield, Partner
By <u>Kristan J. O'Neill</u> Kristan J. O'Neill, Partner	By <u>Lee R. Schultz</u> Lee R. Schultz, Partner
By _____ Brian T. O'Neill, Partner	By <u>Harold E. Blackwell</u> Harold E. Blackwell, Partner
By _____ Blake R. O'Neill, Partner	Edith J. Carroll, Inc., Partner
	By <u>Edith J. Carroll Pres.</u> Edith J. Carroll, President

(Signed in individual capacities and not as representatives in the  
Barcellos or Sagouspe cases)

Excelsior Farms (pka JEO Partnership) a California general partnership

By <u>Edwin R. O'Neill, partner</u>	By <u>Shannon L. Stubblefield, Partner</u>
Edwin R. O'Neill, Partner	
By <u>Kristan J. O'Neill, Partner</u>	By <u>Lee R. Schultz, Partner</u>
Kristan J. O'Neill, Partner	Lee R. Schultz, Partner
By <u>Brian T. O'Neill, Partner</u>	By <u>Harold E. Blackwell, Partner</u>
Brian T. O'Neill, Partner	Harold E. Blackwell, Partner
By <u>Blake R. O'Neill, Partner</u>	Edith J. Carroll, Inc., Partner
Blake R. O'Neill, Partner	
	By <u>Edith J. Carroll, President</u>
	Edith J. Carroll, President

La Paloma Farms (pka SLO Partnership) a California general partnership

By <u>Edwin R. O'Neill, partner</u>	By <u>Shannon L. Stubblefield, Partner</u>
Edwin R. O'Neill, Partner	Shannon L. Stubblefield, Partner
By <u>Kristan J. O'Neill, Partner</u>	By <u>Lee R. Schultz, Partner</u>
Kristan J. O'Neill, Partner	Lee R. Schultz, Partner
By <u>Brian T. O'Neill, Partner</u>	By <u>Harold E. Blackwell, Partner</u>
Brian T. O'Neill, Partner	Harold E. Blackwell, Partner
By <u>Blake R. O'Neill, Partner</u>	Edith J. Carroll, Inc., Partner
Blake R. O'Neill, Partner	
	By <u>Edith J. Carroll, President</u>
	Edith J. Carroll, President

(Signed in individual capacities and not as representatives in the Barcellos or Sagouspe cases)

Excelsior Farms (pka JEO Partnership) a California general partnership

By <u>Edwin R. O'Neill, partner</u>	By _____
Edwin R. O'Neill, Partner	Shannon L. Stubblefield, Partner
By _____	By <u>Lee R. Schultz</u>
Kristan J. O'Neill, Partner	Lee R. Schultz, Partner
By _____	By <u>Harold E. Blackwell</u>
Brian T. O'Neill, Partner	Harold E. Blackwell, Partner
By <u>Blake R. O'Neill</u>	Edith J. Carroll, Inc., Partner
Blake R. O'Neill, Partner	By _____
	Edith J. Carroll, President

La Paloma Farms (pka SLO Partnership) a California general partnership

By <u>Edwin R. O'Neill, partner</u>	By _____
Edwin R. O'Neill, Partner	Shannon L. Stubblefield, Partner
By _____	By <u>Lee R. Schultz</u>
Kristan J. O'Neill, Partner	Lee R. Schultz, Partner
By _____	By <u>Harold E. Blackwell</u>
Brian T. O'Neill, Partner	Harold E. Blackwell, Partner
By <u>Blake R. O'Neill</u>	Edith J. Carroll, Inc., Partner
Blake R. O'Neill, Partner	By _____
	Edith J. Carroll, President

(Signed in individual capacities and not as representatives in the  
Barcellos or Sagouspe cases)

Shasta Farms (pka TBO Partnership) a California general partnership

By Edwin R. O'Neill, partner  
Edwin R. O'Neill, Partner

By Kristan J. O'Neill  
Kristan J. O'Neill, Partner

By \_\_\_\_\_  
Brian T. O'Neill, Partner

By \_\_\_\_\_  
Blake R. O'Neill, Partner

By Shannon L. Stubblefield  
Shannon L. Stubblefield, Partner

By Lee R. Schultz  
Lee R. Schultz, Partner

By Harold E. Blackwell  
Harold E. Blackwell, Partner

Edith J. Carroll, Inc., Partner

By Edith J. Carroll Pres.  
Edith J. Carroll, President

(Signed in individual capacities and not as representatives in the  
Barcellos or Sagouspe cases)



Shasta Farms (pka TBO Partnership) a California general partnership

By Edwin R. O'Neill, partner  
Edwin R. O'Neill, Partner

By \_\_\_\_\_  
Shannon L. Stubblefield, Partner

By \_\_\_\_\_  
Kristan J. O'Neill, Partner

By Lee R. Schultz  
Lee R. Schultz, Partner

By Brian T. O'Neill  
Brian T. O'Neill, Partner

By Harold E. Blackwell  
Harold E. Blackwell, Partner

By \_\_\_\_\_  
Blake R. O'Neill, Partner

Edith J. Carroll, Inc., Partner

By \_\_\_\_\_  
Edith J. Carroll, President

(Signed in individual capacities and not as representatives in the  
Barcellos or Sagouspe cases)

Shasta Farms (pka TBO Partnership) a California general partnership

By Edwin R. O'Neill, partner  
Edwin R. O'Neill, Partner

By \_\_\_\_\_  
Shannon L. Stubblefield, Partner

By \_\_\_\_\_  
Kristan J. O'Neill, Partner

By Lee R. Schultz  
Lee R. Schultz, Partner

By \_\_\_\_\_  
Brian T. O'Neill, Partner

By Harold E. Blackwell  
Harold E. Blackwell, Partner

By Blake R. O'Neill  
Blake R. O'Neill, Partner

Edith J. Carroll, Inc., Partner

By \_\_\_\_\_  
Edith J. Carroll, President

(Signed in individual capacities and not as representatives in the  
Barcellos or Sagouspe cases)

*Peck Settlement*

*Dec 8/2002.*

Orff Family

*Francis A. Orff*  
Francis A. Orff

Trust under the Will of Angie Orff, Deceased

By *Francis A. Orff* *attorney in fact*  
Francis A. Orff, Trustee

*Francis Ronald Orff* *attorney in fact*  
Francis Ronald Orff *attorney in fact*

*Linda Orff*  
Linda Orff

(Signed in individual capacities and not as representatives in the Barcellos or Sagouspe cases)

*Peck Settlement*

*Dec 4/2002.*

Orff Family

*Francis A. Orff*  
Francis A. Orff

Trust under the Will of Angie Orff, Deceased

By *Francis A. Orff Attorney in Fact*  
Francis A. Orff, Trustee

\_\_\_\_\_  
Francis Ronald Orff

\_\_\_\_\_  
Linda Orff

(Signed in individual capacities and not as representatives in the  
Barcellos or Sagouspe cases)

Peck Family

Michael Peck

Michael Peck

Kathleen P. Hopkins

Kathleen P. Hopkins

Patrick S. Peck

Patrick S. Peck

J. Kelly Peck

J. Kelly Peck

R. Murphy Peck

R. Murphy Peck

Amy P. Lazarus

Amy P. Lazarus

M. Duff Peck

M. Duff Peck

Maria P. Manock

Maria P. Manock

Carolyn G. Peck

Carolyn G. Peck

Trust under the Will of Norman Sumner Peck

By Carolyn G. Peck, Trustee

Carolyn G. Peck, Trustee

Peck 8, a California general partnership

By Michael Peck  
Michael Peck, Partner

By R. Murphy Peck  
R. Murphy Peck, Partner

By Kathleen P. Hopkins  
Kathleen P. Hopkins, Partner

By Amy P. Lazarus  
Amy P. Lazarus, Partner

By Patrick S. Peck  
Patrick S. Peck, Partner

By M. Duff Peck  
M. Duff Peck, Partner

By J. Kelly Peck  
J. Kelly Peck, Partner

By Maria P. Manock  
Maria P. Manock, Partner

Peck Family Partners, a California general partnership

By Michael Peck  
Michael Peck, Partner

By R. Murphy Peck  
R. Murphy Peck, Partner

By Kathleen P. Hopkins  
Kathleen P. Hopkins, Partner

By Amy P. Lazarus  
Amy P. Lazarus, Partner

By Patrick S. Peck  
Patrick S. Peck, Partner

By M. Duff Peck  
M. Duff Peck, Partner

By J. Kelly Peck  
J. Kelly Peck, Partner

By Maria P. Manock  
Maria P. Manock, Partner

Ashley Peck Trust

By J. Kelly Peck  
J. Kelly Peck, Trustee

Sumner Peck Ranch, Inc., a California corporation

By Carolyn G. Peck  
Carolyn G. Peck, President

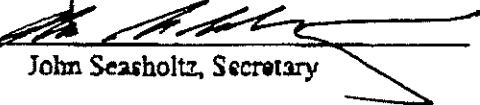
Seasholtz Family

Mendota Land Company, a California corporation

By

  
Vicky Seasholtz, President

By

  
John Seasholtz, Secretary

Pappas Land Co., a California corporation

By

  
Vicky Seasholtz, President

By

  
John Seasholtz, Secretary

**D. Silveira Family**

Dudley Silveira  
Dudley Silveira

Charlotte Silveira  
Charlotte Silveira

Darrell Silveira  
Darrell Silveira

Eric Blanchard  
Eric Blanchard (aka Rick Blanchard)

Allison Blanchard  
Allison Blanchard

Eletha Silveira  
Eletha Silveira

Silveira Family Trust One

By Dudley Silveira  
Dudley Silveira, Trustee

Silveira Family Trust Two

By Dudley Silveira  
Dudley Silveira, Trustee

Trust under the Will of Louis J. Silveira

By Dudley Silveira  
Dudley Silveira, Trustee



E. Silveira Family

Elsie Silveira  
Elsie Silveira

Stanley J. Silveira  
Stanley J. Silveira

**M. Silveira Family**

Michael W. Silveira

By Judy E. Silveira  
Judy E. Silveira, Attorney in Fact

Judy E. Silveira  
Judy E. Silveira

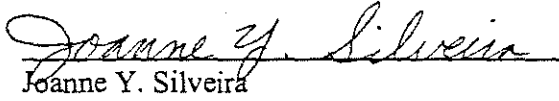
Michael W. Silveira and Judy E. Silveira Living Trust

By Judy E. Silveira  
Judy E. Silveira, Trustee

R. Silveira Family

A handwritten signature in cursive script, appearing to read "Richard G. Silveira", written over a horizontal line.

Richard G. Silveira

A handwritten signature in cursive script, appearing to read "Joanne Y. Silveira", written over a horizontal line.

Joanne Y. Silveira

Miriam Silveira Family

Miriam Silveira  
Miriam M. Silveira

Thomsen FamilyAllen S. Thomsen

Allen S. Thomsen

Thomas L. Thomsen

Thomas L. Thomsen

Kenneth J. Thomsen

Kenneth J. Thomsen

Mary H. Thomsen

Mary H. Thomsen

Paulette Thomsen

Paulette Thomsen

Joanne Thomsen

Joanne Thomsen

Thomas L. Thomsen, Jr.Veronica Thomsen Gonser

Veronica Thomsen Gonser

Elizabeth Thomsen

Elizabeth Thomsen

Allen S. Thomsen Trust

By Kenneth J. Thomsen

Kenneth J. Thomsen, Trustee

Thomas L. Thomsen Trust dated December 17, 1975

By Allen S. Thomsen

Allen S. Thomsen, Trustee

Thomas L. Thomsen Trust dated April 21, 1981

By Allen S. Thomsen

Allen S. Thomsen, Trustee

Thomsen Family

---

Allen S. Thomsen

---

Thomas L. Thomsen

---

Kenneth J. Thomsen

---

Mary H. Thomsen

---

Paulette Thomsen

---

Joanne Thomsen

Estate of Thomas L. Thomsen, Jr., Deceased

By Marita Lovegren, Executor, *Executor*  
Marita Lovegren, Executor

---

Veronica Thomsen Gonser

---

Elizabeth Thomsen

Allen S. Thomsen Trust

By 

---

Kenneth J. Thomsen, Trustee

Thomas L. Thomsen Trust dated December 17, 1975

By 

---

Allen S. Thomsen, Trustee

Kenneth J. Thomsen Trust

By Thomas L. Thomsen  
Thomas L. Thomsen, Trustee

Stamoules Family

Estate of Helen Stamoules

By Pagona Stefanopoulos  
Pagona Stefanopoulos, Executor

Pagona Stefanopoulos  
Pagona Stefanopoulos



WALTON FAMILY:

James R. Walton  
James R. Walton

Virginia Sue Audino  
Virginia Sue Audino

Carolyn Blankenship  
Carolyn Blankenship

Ross Estey Walton  
By Gretta Walton  
Ross Estey Walton

By Gretta Walton

His Attorney in Fact

Rodney Thomas Walton  
Rodney Thomas Walton

Stephanie K. Walton  
Stephanie K. Walton

Angela Helen Walton  
Angela Helen Walton

Christina F. Walton  
Christina F. Walton

Catherine H. Kelley

Catherine H. Kelley, Trustee  
of the Melvin H. Kelley &  
Catherine H. Kelly 1998 Family  
Trust

Keith H. Korporaal  
Victoria W. Korporaal

Keith H. Korporaal & Victoria W.  
Korporaal, Co-trustees of the  
Keith & Victoria Korporaal Family  
Trust

Wolfsen Family

Murrieta Westlands Trust

By Michael St. Peter  
Michael St. Peter, Trustee

Donald C. Skinner  
Donald C. Skinner

Lynn W. Skinner  
Lynn W. Skinner

Robert H. Mueller  
Robert H. Mueller

M. Joanne Mueller  
M. Joanne Mueller

Lionel Caeton  
Lionel Caeton

\_\_\_\_\_  
Charlotte Caeton

Estate of George Butts

By \_\_\_\_\_  
Barbara Lindemann

\_\_\_\_\_  
Marion Butts

\_\_\_\_\_  
Barbara Lindemann

\_\_\_\_\_  
Eric Nelson

\_\_\_\_\_  
Polly Nelson

Wolfsen Family

Murrieta Westlands Trust

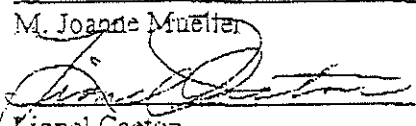
By \_\_\_\_\_  
Michael St. Peter, Trustee

\_\_\_\_\_  
Donald C. Skinner

\_\_\_\_\_  
Lynn W. Skinner

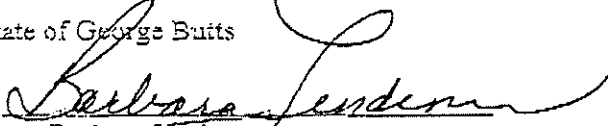
\_\_\_\_\_  
Robert H. Mueller

\_\_\_\_\_  
M. Joanne Mueller

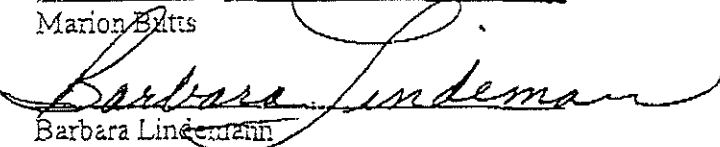
  
\_\_\_\_\_  
Lionel Caeton

\_\_\_\_\_  
Charlotte Caeton

Estate of George Buitts

By   
\_\_\_\_\_  
Barbara Lindemann

  
\_\_\_\_\_  
Marion Buitts

  
\_\_\_\_\_  
Barbara Lindemann

\_\_\_\_\_  
Eric Nelson

\_\_\_\_\_  
Polly Nelson

Wolfesen Family

Murrieta Westlands Trust


By \_\_\_\_\_  
Michael St. Peter, Trustee

\_\_\_\_\_  
Donald C. Skinner

\_\_\_\_\_  
Lynn W. Skinner

\_\_\_\_\_  
Robert H. Mueller

\_\_\_\_\_  
M. Joanne Mueller

  
\_\_\_\_\_  
Lionel Caeton

  
\_\_\_\_\_  
Charlotte Caeton

Estate of George Butts

By \_\_\_\_\_  
Barbara Lindemann

\_\_\_\_\_  
Marion Butts

\_\_\_\_\_  
Barbara Lindemann

\_\_\_\_\_  
Eric Nelson

\_\_\_\_\_  
Polly Nelson

Wolfesen Family

Murrieta Westlands Trust

By \_\_\_\_\_  
Michael St. Peter, Trustee

\_\_\_\_\_  
Donald C. Skinner

\_\_\_\_\_  
Lynn W. Skinner

\_\_\_\_\_  
Robert H. Mueller

\_\_\_\_\_  
M. Joanne Mueller

\_\_\_\_\_  
Lionel Caeton

\_\_\_\_\_  
Charlotte Caeton

Estate of George Butts

By \_\_\_\_\_  
Barbara Lindemann


\_\_\_\_\_  
Marion Butts

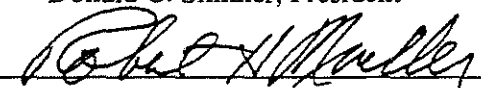
\_\_\_\_\_  
Barbara Lindemann

  
\_\_\_\_\_  
Eric Nelson


  
\_\_\_\_\_  
Polly Nelson

Turner Island Farms, [a California corporation]

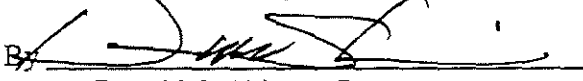
By   
Donald C. Skinner, President

By   
Robert H. Mueller, Secretary


TIMCO doing business as Murrieta Farms, a California general partnership

By   
Donald C. Skinner, Partner

METCO, a California general partnership

By   
Donald C. Skinner, Partner

Delta South, a California general partnership

By   
Donald C. Skinner, Partner

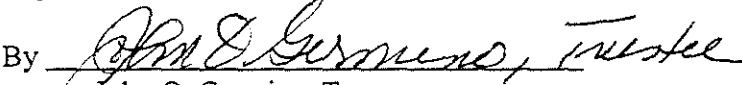
Lawrence J. and Diane M. Wolfson 1988 Revocable Trust

By  Trustee  
John O. Germino, Trustee

Lawrence M. Wolfson 1988 Revocable Trust

By  Trustee  
John O. Germino, Trustee

Taylor C. Wolfson December 31, 1971 Trust

By  Trustee  
John O. Germino, Trustee

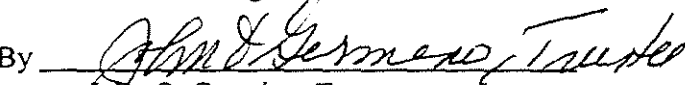
Ann B. Wolfson October 31, 1974 Trust

By  Trustee  
John O. Germino, Trustee

Elizabeth Kirkpatrick 1988 Revocable Trust

By  Trustee  
John O. Germino, Trustee

Lavonne Borcharding 1988 Revocable Trust

By  Trustee  
John O. Germino, Trustee

Stacie L. Skinner Hanson 1988 Revocable Trust



By John O. Germino, Trustee  
John O. Germino, Trustee

Lawrence S. Skinner 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Laurel L. Skinner December 20, 1976 Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Thomas C. Skinner December 20, 1976 Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

HENRY A. WOLFSEN 1998 REVOCABLE TRUST, SUCCESSOR TO pg  
Henry A. and Frances M. Wolfesen 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Cherie Palazzo 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Jeannie Bruner 1988 Revocable Trust

By \_\_\_\_\_  
John O. Germino, Trustee

Laurie Gatrell 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Aaron Henry Wolfesen December 20, 1976 Trust

By \_\_\_\_\_  
John O. Germino, Trustee

Jason T. Wolfesen December 20, 1976 Trust

By

John O. Germino, Trustee  
John O. Germino, Trustee

Lawrence S. Skinner 1988 Revocable Trust

By

John O. Germino, Trustee  
John O. Germino, Trustee

Laurel L. Skinner December 20, 1976 Trust

By

John O. Germino, Trustee  
John O. Germino, Trustee

Thomas C. Skinner December 20, 1976 Trust

By

John O. Germino, Trustee  
John O. Germino, TrusteeHENRY A. WOLFSEN / 1988 REVOCABLE TRUST, SUCCESSOR TO John  
Henry A. and Frances M. Wolfesen 1988 Revocable Trust

By

John O. Germino, Trustee  
John O. Germino, Trustee

Cherie Palazzo 1988 Revocable Trust

By

John O. Germino, Trustee  
John O. Germino, Trustee

Jeannie Bruner 1988 Revocable Trust

By

John O. Germino, Trustee  
John O. Germino, Trustee

Laurie Garrell 1988 Revocable Trust

By

John O. Germino, Trustee  
John O. Germino, Trustee

Aaron Henry Wolfesen December 20, 1976 Trust

By

John O. Germino, Trustee  
John O. Germino, Trustee

Jason T. Wolfesen December 20, 1976 Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Vance Wolfsen 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Charles Wolfsen 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Bonnie Wear 1988 Revocable Trust

By \_\_\_\_\_  
John O. Germino, Trustee

Susan M. Thomson 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Sharon L. Wolfsen October 31, 1974 Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Gerald R. and Shirley E. Stoltenberg 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Cathy Mendoza 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Gerald B. Stoltenberg 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Jonathan Stoltenberg 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Vance Wolfson 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Charles Wolfson 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Bonnie Wear 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Susan M. Thomson 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Sharon L. Wolfson October 31, 1974 Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Gerald R. and Shirley E. Stoltenberg 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Cathy Mendoza 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Gerald B. Stoltenberg 1988 Revocable Trust

By John O. Germino, Trustee  
John O. Germino, Trustee

Jonathan Stoltenberg 1988 Revocable Trust

By *John O. Germino, Trustee*  
John O. Germino, Trustee

Russell C. Stoltenberg 1988 Revocable Trust

By *John O. Germino, Trustee*  
John O. Germino, Trustee

**FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT  
AND ESCROW INSTRUCTIONS**

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "First Amendment") is made and entered into as of this 16<sup>th</sup> day of July, 2013 (the "Amendment Effective Date"), by and between Westlands Water District, a California water district ("Seller"), and SiteCo, LLC, a Delaware limited liability company, or nominee ("Buyer").

**RECITALS**

A. Seller and Buyer are parties to that certain Purchase and Sale Agreement and Escrow Instructions dated as of January 21, 2011 (the "Original Purchase Agreement"), pursuant to which Seller granted to Buyer the right to purchase certain real property located in Fresno County, California, consisting of approximately 3,574.73 acres as more particularly described in Exhibit A to the Original Purchase Agreement.

B. A memorandum of the Original Purchase Agreement was recorded on February 10, 2011 in the Official Records of Fresno County, California, as Document 2011-0021974 (the "Original Memorandum").

C. Pursuant to Section 4(f) of the Original Purchase Agreement, Buyer has the right, with the concurrence of Seller, to add and/or substitute other parcels of real property for any Parcels included within the Property.

D. Seller and Buyer desire to supplement and amend the Original Purchase Agreement to add additional parcels and to substitute other parcels of real property for certain parcels of real property currently subject to the Original Purchase Agreement, as set forth herein.

**AGREEMENT**

For valuable consideration, the receipt of which is hereby acknowledged, the parties agree that the Original Purchase Agreement is hereby amended as follows:

1. Recitals. Seller and Buyer agree that the above recitals are true and correct and are hereby incorporated herein as though set forth in full.

2. Incorporation of Defined Terms. All terms not otherwise defined in this First Amendment shall have the meaning as set forth in the Original Purchase Agreement.

3. Description of the Land. **Exhibit A** of the Original Purchase Agreement and the description of the "Land" as described therein is hereby deleted in its entirety and replaced with the description of the parcels of real property as described on **Exhibit A** attached hereto and incorporated herein (the "Land"). Any reference in the Original Purchase Agreement to the "Land" shall hereinafter mean the "Land" as described in the preceding sentence and as described on **Exhibit A** attached hereto. Any reference in the Original Purchase Agreement to the "Property" or a "Group" or "Groups" or a "Parcel"

or "Parcels" shall hereinafter mean the "Property" or a "Group" or "Groups" or a "Parcel" or "Parcels" as described on Exhibit A attached hereto. Seller and Buyer hereby agree that the Land, as amended by this First Amendment, is comprised of approximately 3,671 acres.

4. Amendment of Original Memorandum; Recordation. Seller and Buyer agree that this First Amendment shall not be recorded, but concurrent with the execution hereof, Seller and Buyer shall execute a First Amendment to Memorandum of Purchase and Sale Agreement and Escrow Instructions in the form attached hereto as Exhibit B, (the "First Amendment to Memorandum") and each party agrees to cause such instrument to be recorded in the Official Records of Fresno County, California.

5. APN 028-101-70ST. Pursuant to Section 1(a) of the Original Purchase Agreement, Buyer, at its sole option, may elect to eliminate certain portions of the parcel commonly known as APN 028-101-70ST from the Land to be purchased under the Original Purchase Agreement. Buyer hereby elects to exercise such right, retaining only the cross-hatched portion of APN 028-101-70ST as depicted in Exhibit C attached hereto (the "Retained Portion of APN 028-101-70ST") and eliminating the remaining portion of APN 028-101-70ST from the provisions of the Original Purchase Agreement. Seller shall reasonably cooperate, at no expense to Seller, with Buyer in Buyer's seeking any regulatory conditions and requirements, including, without limitation, the signing of any application, filing, request, waiver, variance, subdivision map or parcel map, land use permit and/or approvals, to create a separate legal parcel (whether by means of a subdivision, lot line adjustment, the issuance of certificates of compliance, or other means permitted under the California Subdivision Map Act) for the Retained Portion of APN 028-101-70ST. The Closing of the sale of the Retained Portion of APN 028-101-70ST is expressly conditioned upon the legal subdivision of APN 028-101-70ST, including the approval and the filing of a final subdivision map or parcel map if required under the California Subdivision Map Act. This legal parcel condition is not subject to waiver by the parties.

6. Release of Terminated Parcels. Seller and Buyer agree that the Parcels listed on Exhibit D attached hereto, which Parcels were included in Exhibit A of the Original Purchase Agreement, are hereby terminated and released from the provisions of the Original Purchase Agreement (the "Terminated Parcels"). The termination and release of the Terminated Parcels shall be evidenced of record in the First Amendment to Memorandum.

7. Reaffirmation of Agreement; Effect of Amendment. Except as modified and amended by this First Amendment, the terms and conditions of the Original Purchase Agreement shall remain unmodified and continue in full force and effect, and the parties hereby ratify and confirm the provisions of the Original Purchase Agreement as amended in Section 3, Section 4, Section 5 and Section 6 above. Buyer acknowledges that this First Amendment does not extend the Feasibility Period, and does not modify the Extension Periods. If there is any conflict between the terms and provisions of the Original Purchase Agreement and this First Amendment, the terms and provisions of this First Amendment shall control and prevail.

8. Reference to Agreement. Any and all notices, requests, certificates and other documents or instruments executed and delivered concurrently with or after the execution and delivery of this First Amendment may refer to the Original Purchase Agreement without making specific reference to this First Amendment, but nevertheless all such references shall be deemed to include this First Amendment, unless the context shall otherwise require. Reference in the Original Purchase Agreement to the "Agreement" shall mean the Original Purchase Agreement, as modified by this First Amendment.

9. Counterparts; Headings. This First Amendment may be executed in one or more counterparts. All executed counterparts shall constitute one agreement and each counterpart shall be deemed an original. The parties hereby acknowledge and agree that facsimile signatures or signatures transmitted by electronic mail in so-called "pdf" format shall be legal and binding and shall have the same full force and effect as if an original of this First Amendment had been delivered. Seller and Buyer (a) intend to be bound by the signatures on any document sent by facsimile or electronic mail, (b) are aware that the other party will rely on such signatures, and (c) hereby waive any defenses to the enforcement of the terms of this First Amendment based on the foregoing forms of signatures. The headings to sections of this First Amendment are for convenient reference only and shall not be used in interpreting this First Amendment.

10. Applicable Law. This First Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

11. Successors and Assigns. This First Amendment shall inure to the benefit of Seller, Buyer and each of their successors and assigns.

12. Entire Agreement. This First Amendment and the other documents referred to herein constitute the entire agreement among the parties hereto pertaining to the subject matter hereof, and any and all other written or oral agreements existing among the parties hereto are expressly canceled.

13. Legal Costs. If any legal action is brought by either party to enforce any provision of this First Amendment, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and court costs in such amounts as shall be allowed by the court.

14. Amendments. This First Amendment may not be modified or otherwise altered without the written consent of Seller and Buyer.



IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date first written above.

**SELLER:**

Westlands Water District,  
a California water district

By: 

Name: Dave Ciapponi

Its: Secretary

**BUYER:**

SiteCo, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF LAND**

Property located in the County of Fresno, State of California, more particularly described as follows:

<b>Group</b>	<b>APN</b>	<b>Acres</b>
A	028-101-45ST	158
A	028-101-46ST	158
A	028-101-47ST	160
A	028-101-48ST	160
B	028-101-50ST	160
B	028-101-51T	220
B	028-101-53T	20
B	Portion of 028-101-70ST lying south of Dinuba Avenue	224
C	028-101-23ST	80
D	028-101-22T	80
E	038-320-17T	162
E	038-320-18ST	160
E	038-320-23ST	157
F	038-320-01ST	40
F	038-320-06ST	41
F	038-320-24ST	21
F	038-320-25ST	20
F	038-320-27ST	20
F	038-320-28ST	20
F	038-320-16T	21
F	038-320-30ST	20

G	038-320-29ST	20
H	038-320-02T	59
I	038-320-37ST	20
J	038-320-38ST	21
K	028-111-60ST	319
K	028-111-50ST	0.7
L	028-111-52ST	161
L	028-111-53ST	2.6
M	028-111-47ST	80
N	028-111-46T	20
O	028-111-45T	10
P	028-111-44ST	50
Q	038-080-35ST	165
R	038-080-03S	160
S	028-111-43ST	161
T	038-080-38ST	160
U	038-080-05ST	160
<b>Total</b>		<b>3,671</b>

**EXHIBIT B**

**FORM OF FIRST AMENDMENT TO MEMORANDUM OF PURCHASE AND SALE  
AGREEMENT AND ESCROW INSTRUCTIONS**

Recording requested by  
And when recorded mail to:

SiteCo, LLC  
300 California Street, 7th Floor  
San Francisco, CA 94104  
Attention: Office of the General Counsel

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**FIRST AMENDMENT TO MEMORANDUM OF PURCHASE AND SALE  
AGREEMENT AND ESCROW INSTRUCTIONS**

This FIRST AMENDMENT TO MEMORANDUM OF PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "Amendment") dated as of July \_\_, 2013, is entered into by and between Westlands Water District, a California water district ("Seller"), and SiteCo, LLC, a Delaware limited liability company ("Buyer").

**RECITALS**

A. Seller and Buyer previously entered into that certain Memorandum of Purchase and Sale Agreement and Escrow Instructions, dated as of January 21, 2011 and recorded on February 10, 2011, as Document 2011-0021974 in the Official Records of Fresno County, California (the "Original Memorandum"), with respect to certain real property located in Fresno County, California, as more particularly described on Exhibit A attached to the Original Memorandum.

B. Seller and Buyer have now entered into that certain First Amendment to Purchase and Sale Agreement and Escrow Instructions, dated as of July \_\_, 2013 (the "First Amendment"), to add additional parcels and to substitute other parcels of real property for certain parcels of real property as described in the Original Memorandum.

NOW, THEREFORE, Seller and Buyer hereby agree that the Original Memorandum is amended as follows:

1. Description of the Property. Exhibit A of the Original Memorandum and the description of the "Property" as described therein is hereby deleted in its entirety and replaced with the description of the parcels of real property as described on Exhibit A attached hereto and incorporated herein (the "Property"). Any reference in the Original

Memorandum to the "Property" shall hereinafter mean the "Property" as described in the preceding sentence and as described on Exhibit A attached hereto. Seller and Buyer hereby agree that the Property, as amended by the First Amendment, is comprised of approximately 3,671 acres.

2. Release and Quitclaim of Terminated Parcels. Pursuant to the First Amendment, Seller and Buyer have agreed to terminate and release certain parcels of real property which were included in Exhibit A of the Original Memorandum. Buyer hereby remises, releases and forever quitclaims to Seller all of Buyer's rights and interests in the real property more particularly described in Exhibit B attached hereto (the "Terminated Parcels").

3. Effect of Memorandum Amendment. Seller and Buyer have executed and recorded this Amendment to give notice of the First Amendment and their respective rights and obligations with respect to the Property. In the event of any inconsistency between the terms of this Amendment and the First Amendment, the terms of the First Amendment shall prevail.

4. Counterparts. This Amendment may be executed in any number of counterparts, each of which when executed and delivered shall be an original, and each such counterpart shall, when combined with all other such counterparts, constitute one agreement binding on the parties hereto.

5. Ratification. Except as amended hereby, the Original Memorandum is hereby ratified and confirmed and shall continue in full force and effect.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first written above.

**SELLER:**

Westlands Water District,  
a California water district

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**BUYER:**

SiteCo, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of the Notary Public

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of the Notary Public

**Exhibit A**  
**to First Amendment to Memorandum of Purchase and Sale Agreement**  
**and Escrow Instructions**

**GROUP A**

APN: 028-101-45-S

PARCEL 1:

THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT THEREFROM ANY PORTION THEREOF WHICH LIES WITHIN THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID SOUTHWEST CORNER BEING AT COORDINATES Y=454694.379 FEET AND X=1592456.595 FEET; THENCE (1) ALONG THE SOUTH LINE OF SAID SECTION 31, SOUTH 88° 30' 55" EAST 141.64 FEET; THENCE (2) NORTH 58° 41' 15" WEST 82.72 FEET TO THE EAST LINE OF THE WEST 70 FEET OF THE SOUTHWEST QUARTER OF SAID SECTION 31; THENCE (3) ALONG SAID EAST LINE NORTH 01° 18' 45" EAST 2571.30 FEET; THENCE (4) NORTH 61° 18' 45" EAST 82.72 FEET TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 31; THENCE (5) ALONG SAID NORTH LINE NORTH 88° 36' 17" WEST 141.64 FEET TO THE WEST LINE OF SAID SECTION 31; THENCE (6) ALONG SAID WEST LINE NORTH 01° 18' 45" EAST 2654.80 FEET TO THE NORTHWEST CORNER OF SAID SECTION 31; THENCE (7) ALONG THE NORTH LINE OF SAID SECTION 36 NORTH 88° 53' 39" WEST 101.64 FEET; THENCE (8) SOUTH 58° 41' 15" EAST 82.72 FEET TO THE WEST LINE OF THE EAST 30 FEET OF SAID SECTION 36; THENCE (9) ALONG SAID WEST LINE SOUTH 01° 18' 45" WEST 5224.75 FEET; THENCE (10) SOUTH 61° 18' 45" WEST 82.72 FEET TO THE SOUTH LINE OF SAID SECTION 36; THENCE (11) ALONG LAST SAID SOUTH LINE SOUTH 88° 49' 20" EAST 101.64 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM UNTO FLOYD A. YEAROUT, AN UNDIVIDED 3/8THS INTEREST (37 1/2% OUT OF 100%) AND UNTO RAYMOND L. YEAROUT, AN UNDIVIDED 1/8THS INTEREST (12 1/2% OUT OF 100%) IN AND TO ALL OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS LOCATED IN, ON OR UNDER SAID PROPERTY, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS TO SAID PROPERTY FOR THE PURPOSE OF EXTRACTING OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS FROM SAID PROPERTY AND TOGETHER WITH ALL OTHER RIGHTS NECESSARY FOR SAID PURPOSES, AS RESERVED IN THE DEED FROM FLOYD A. YEAROUT, ALSO KNOWN AS F. A.



YEAROUT AND ANNA V. YEAROUT, HIS WIFE, RAYMOND L. YEAROUT AND WILDA YEAROUT, HIS WIFE, TO SUMNER PECK RANCH, INC., A CORPORATION, DATED FEBRUARY 10, 1952, RECORDED FEBRUARY 18, 1952 IN BOOK 3124, PAGE 527 OF OFFICIAL RECORDS, INSTRUMENT NO. 8803.

ALSO EXCEPTING THEREFROM ALL OF GRANTOR'S RIGHT, TITLE AND INTEREST IN AND TO ALL OIL, GAS, MINERALS AND HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND AS RESERVED BY CAROLYN G. PECK, ET AL, IN A DEED RECORDED JUNE 2, 2009 AS INSTRUMENT NO. 2009-0074108 OF OFFICIAL RECORDS.

APN: 028-101-46-S  
PARCEL 2:

THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT THEREFROM ANY PORTION THEREOF WHICH LIES WITHIN THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID SOUTHWEST CORNER BEING AT COORDINATES Y=454694.379 FEET AND X=1592456.595 FEET; THENCE (1) ALONG THE SOUTH LINE OF SAID SECTION 31, SOUTH 88° 30' 55" EAST 141.64 FEET; THENCE (2) NORTH 58° 41' 15" WEST 82.72 FEET TO THE EAST LINE OF THE WEST 70 FEET OF THE SOUTHWEST QUARTER OF SAID SECTION 31; THENCE (3) ALONG SAID EAST LINE NORTH 01° 18' 45" EAST 2571.30 FEET; THENCE (4) NORTH 61° 18' 45" EAST 82.72 FEET TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 31; THENCE (5) ALONG SAID NORTH LINE NORTH 88° 36' 17" WEST 141.64 FEET TO THE WEST LINE OF SAID SECTION 31; THENCE (6) ALONG SAID WEST LINE NORTH 01° 18' 45" EAST 2654.80 FEET TO THE NORTHWEST CORNER OF SAID SECTION 31; THENCE (7) ALONG THE NORTH LINE OF SAID SECTION 36 NORTH 88° 53' 39" WEST 101.64 FEET; THENCE (8) SOUTH 58° 41' 15" EAST 82.72 FEET TO THE WEST LINE OF THE EAST 30 FEET OF SAID SECTION 36; THENCE (9) ALONG EAST SAID WEST LINE SOUTH 01° 18' 45" WEST 5224.75 FEET; THENCE (10) SOUTH 61° 18' 45" WEST 82.72 FEET TO THE SOUTH LINE OF SAID SECTION 36; THENCE (11) ALONG LAST SAID SOUTH LINE SOUTH 88° 49' 20" EAST 101.64 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING UNTO FLOYD A. YEAROUT, AN UNDIVIDED 3/8THS INTEREST (37 1/2% OUT OF 100%) AND UNTO RAYMOND L. YEAROUT, AN UNDIVIDED 1/8THS INTEREST (12 1/2% OUT OF 100%) IN AND TO ALL OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS LOCATED IN, ON OR UNDER SAID PROPERTY, TOGETHER WITH THE RIGHT

OF INGRESS AND EGRESS TO SAID PROPERTY FOR THE PURPOSE OF EXTRACTING OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS FROM SAID PROPERTY AND TOGETHER WITH ALL OTHER RIGHTS NECESSARY FOR SAID PURPOSES, AS RESERVED IN THE DEED FROM FLOYD A. YEAROUT, ALSO KNOWN AS F. A. YEAROUT AND ANNA V. YEAROUT, HIS WIFE, RAYMOND L. YEAROUT AND WILDA YEAROUT, HIS WIFE, TO SUMNER PECK RANCH, INC., A CORPORATION, DATED FEBRUARY 10, 1952, RECORDED FEBRUARY 18, 1952 IN BOOK 3124, PAGE 527 OF OFFICIAL RECORDS, INSTRUMENT NO. 8803.

ALSO EXCEPTING THEREFROM ALL OF GRANTOR'S RIGHT, TITLE AND INTEREST IN AND TO ALL OIL, GAS, MINERALS AND HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND AS RESERVED BY CAROLYN G. PECK, ET AL, IN A DEED RECORDED OCTOBER 3, 2003 AS INSTRUMENT NO. 2003-0239333 AND CORRECTED BY A DEED RECORDED JUNE 2, 2009 AS INSTRUMENT NO. 2009-0074108, BOTH OF OFFICIAL RECORDS.

APN: 028-101-47-S  
PARCEL 3:

THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM 75% OF ALL OIL, GAS AND MINERALS SITUATED THEREON OR THEREUNDER AS RESERVED IN THE DEED FROM O.C. GABRIEL AND GLADYS I. GABRIEL, HUSBAND AND WIFE TO SUMNER PECK RANCH, INC., A CORPORATION, RECORDED FEBRUARY 7, 1968 AS INSTRUMENT NO. 9477, OFFICIAL RECORDS.

ALL OIL, GAS, MINERALS AND HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND AS RESERVED BY CAROLYN G. PECK, ET AL, IN A DEED RECORDED OCTOBER 3, 2003 AS INSTRUMENT NO. 2003-0239333 AND CORRECTED BY A DEED RECORDED JUNE 2, 2009 AS INSTRUMENT NO. 2009-0074108, BOTH OF OFFICIAL RECORDS.

APN: 028-101-48-S

PARCEL 4:

THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING AND RESERVING UNTO FLOYD A. YEAROUT, AN UNDIVIDED 3/8THS INTEREST (37 1/2% OUT OF 100%) AND UNTO RAYMOND L. YEAROUT, AN UNDIVIDED 1/8THS INTEREST (12 1/2% OUT OF 100%) IN AND TO ALL OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS LOCATED IN, ON OR UNDER SAID PROPERTY, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS TO SAID PROPERTY FOR THE PURPOSE OF EXTRACTING OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS FROM SAID PROPERTY, AND TOGETHER WITH ALL OTHER RIGHTS NECESSARY FOR SAID PURPOSES, AS RESERVED IN THE DEED FROM FLOYD A. YEAROUT, ALSO KNOWN AS F. A. YEAROUT AND ANNA V. YEAROUT, HIS WIFE, RAYMOND L. YEAROUT AND WILDA YEAROUT, HIS WIFE, TO SUMNER PECK RANCH, INC., A CORPORATION, DATED FEBRUARY 10, 1952, RECORDED FEBRUARY 18, 1952 IN BOOK 3124, PAGE 527 OF OFFICIAL RECORDS, INSTRUMENT NO. 8803.

ALSO EXCEPTING THEREFROM ALL OF GRANTOR'S RIGHT, TITLE AND INTEREST IN AND TO ALL OIL, GAS, MINERALS AND HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND AS RESERVED BY CAROLYN G. PECK, ET AL, IN A DEED RECORDED JUNE 2, 2009 AS INSTRUMENT NO. 2009-0074108 OF OFFICIAL RECORDS.

**GROUP B**

APN: 028-101-50-S

PARCEL 13:

THE SOUTHEAST QUARTER OF SECTION 35, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES LYING OR FLOWING BELOW THE SURFACE OF SAID LAND ABOVE DESCRIBED, AND THE RIGHT TO ENTER UPON SAID LAND FOR THE PURPOSE OF DEVELOPING AND EXTRACTING SAID PRODUCTS THEREFROM AND THE USE OF SUCH PORTION OF THE SURFACE AS MAY BE NECESSARY FOR THE PURPOSE OF ERECTING DERRICKS, TANKS AND OTHER EQUIPMENT FOR SUCH PURPOSES, PROVIDED THAT IN THE EVENT ANY SURFACE CROPS SHALL BE DESTROYED BY SUCH ENTRY AND USE, GRANTEE OR ASSIGNS SHALL BE ENTITLED TO RECEIVE ADEQUATE COMPENSATION FOR SUCH DAMAGE AS MAY BE SUSTAINED THEREBY, AS RESERVED IN THE DEED FROM FARM LANDS PURCHASING CO., A CORPORATION, TO MURIETTA FARMS COMPANY, A CORPORATION, DATED MARCH 14, 1947, RECORDED MARCH 19, 1947 AS INSTRUMENT NO. 15695, OFFICIAL RECORDS.

APN: 028-101-51-S (PORTION)  
PARCEL 7:

THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS, PETROLEUM, PETROLEUM PRODUCTS, HYDROCARBON SUBSTANCES AND ANY OTHER MINERALS IN, UPON OR UNDER SAID LANDS, AS RESERVED IN THE DEED FROM NELLIE T. DAY TO MURIETTA FARMS COMPANY, A CORPORATION, DATED DECEMBER 23, 1952, RECORDED JANUARY 9, 1953, IN BOOK 3249, PAGE 217 OF OFFICIAL RECORDS, INSTRUMENT NO. 1407.

ALSO EXCEPTING AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND MINERAL RIGHTS OF WHATSOEVER NATURE AND DESCRIPTION IN AND UNDER SAID PROPERTY, WITH THE RIGHT TO PROSPECT FOR AND EXPLOIT THE SAME, AND TO MAKE SUFFICIENT USE OF THE SURFACE OF THE REAL PROPERTY

AND ALL EASEMENTS AND RIGHTS OF WAY APPURTENANT THERETO, FOR SAID PURPOSES, AND FOR INGRESS AND EGRESS THERETO AND THEREFROM, AND THE RIGHT TO LAY, MAINTAIN, AND OPERATE PIPELINES OVER AND ACROSS THE REAL PROPERTY FOR THE TRANSPORTATION OF OIL AND GAS, PROVIDED THAT SHOULD GRANTOR, ITS SUCCESSORS, ASSIGNS OR LESSEES IN ANY WAY DAMAGE ANY GROWING CROPS OR OTHER IMPROVEMENTS ON THE REAL PROPERTY IN EXPLOITING OR DEVELOPING THE REAL PROPERTY OR ANY PART THEREOF FOR OIL, GAS OR OTHER MINERALS, THEN THE GRANTOR SHALL PAY SUCH DAMAGES TO THE GRANTEE OR ITS SUCCESSORS AT THE TIME SUCH DAMAGE IS COMMITTED, EXCEPT INsofar AS MUCH DAMAGES ARE UNDERTAKEN AND AGREED TO BE PAID BY ANY LESSEE OF THE GRANTOR OR ITS SUCCESSORS OR ASSIGNS, AS RESERVED BY KRIESANT OPERATING COMPANY, INC., IN DEED RECORDED APRIL 5, 1988, AS INSTRUMENT NO. 88035703, OFFICIAL RECORDS.

APN: 028-101-51-S (PORTION)

PARCEL 8:

THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS, PETROLEUM, PETROLEUM PRODUCTS, HYDROCARBON SUBSTANCES AND ANY OTHER MINERALS IN, UPON OR UNDER SAID PREMISES OR HEREAFTER DISCOVERED IN, UPON OR UNDER THE SAME, TOGETHER WITH THE RIGHT TO ENTER UPON SAID PREMISES FOR THE PURPOSE OF BORING OIL AND GAS WELLS, AND EXTRACTING FROM SAID PREMISES OIL, PETROLEUM, GAS, PETROLEUM PRODUCTS AND OTHER HYDROCARBON SUBSTANCES AND FOR THE PURPOSE OF EXTRACTING ANY OTHER MINERALS THEREIN, THEREUNDER TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS TO AND FROM SAID WELLS AND THE RIGHT TO CONSTRUCT NECESSARY BUILDINGS, TANKS, ROADS, POWER LINES AND OTHER STRUCTURES FOR THE PURPOSE OF USING AND OPERATING SAID WELLS AND TAKING CARE OF SAID OIL, PETROLEUM, GAS, PETROLEUM PRODUCTS AND HYDROCARBON SUBSTANCES, AND ANY OTHER MINERALS, AND ALL OTHER RIGHTS INCIDENTAL AND NECESSARY TO THE EXERCISE OF THE RIGHTS SO RESERVED BY THE GRANTORS, AS RESERVED IN THE DEED FROM HAROLD M. ASHBY AND MARY E. ASHBY, HUSBAND AND WIFE, AS JOINT TENANTS, TO MURIETTA FARMS COMPANY, A CORPORATION, DATED JUNE 7, 1956, RECORDED JUNE 8, 1956 AS INSTRUMENT NO. 41896, IN BOOK 3780, PAGE 594 OF OFFICIAL RECORDS.

ALSO EXCEPTING AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND MINERAL RIGHTS OF WHATSOEVER NATURE AND DESCRIPTION IN AND UNDER SAID PROPERTY, WITH THE RIGHT TO PROSPECT FOR AND EXPLOIT THE SAME, AND TO MAKE SUFFICIENT USE OF THE SURFACE OF THE REAL PROPERTY AND ALL EASEMENTS AND RIGHTS OF WAY APPURTENANT THERETO, FOR SAID PURPOSES, AND FOR INGRESS AND EGRESS THERETO AND THEREFROM, AND THE RIGHT TO LAY, MAINTAIN, AND OPERATE PIPELINES OVER AND ACROSS THE REAL PROPERTY FOR THE TRANSPORTATION OF OIL AND GAS, PROVIDED THAT SHOULD GRANTOR, ITS SUCCESSORS, ASSIGNS OR LESSEES IN ANY WAY DAMAGE ANY GROWING CROPS OR OTHER IMPROVEMENTS ON THE REAL PROPERTY IN EXPLOITING OR DEVELOPING THE REAL PROPERTY OR ANY PART THEREOF FOR OIL, GAS OR OTHER MINERALS, THEN THE GRANTOR SHALL PAY SUCH DAMAGES TO THE GRANTEE OR ITS SUCCESSORS AT THE TIME SUCH DAMAGE IS COMMITTED, EXCEPT INsofar AS SUCH DAMAGES ARE UNDERTAKEN AND AGREED TO BE PAID BY ANY LESSEE OF THE GRANTOR OF ITS SUCCESSORS, OR ASSIGNS, AS RESERVED BY KRIESANT OPERATING COMPANY, INC., IN DEED RECORDED APRIL 5, 1988, AS INSTRUMENT NO. 88035703, OFFICIAL RECORDS.

APN: 028-101-51-S (PORTION)

PARCEL 9:

THE WEST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS, PETROLEUM, PETROLEUM PRODUCTS, HYDROCARBON SUBSTANCES AND ANY OTHER MINERALS IN, UPON OR UNDER SAID PREMISES OR HEREAFTER DISCOVERED IN, UPON OR UNDER THE SAME, AS RESERVED IN THE DEED FROM PAUL B. LADD AND MARGARET B. LADD, HIS WIFE, TO MURIETTA FARMS COMPANY, A CORPORATION, DATED JANUARY 7, 1953, RECORDED JANUARY 21, 1953, AS INSTRUMENT NO. 3607, IN BOOK 3253, PAGE 563 OF OFFICIAL RECORDS.

ALSO EXCEPTING AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND MINERAL RIGHTS OF WHATSOEVER NATURE AND DESCRIPTION IN AND UNDER SAID PROPERTY, WITH THE RIGHT TO PROSPECT FOR AND EXPLOIT THE SAME, AND TO MAKE SUFFICIENT USE OF THE SURFACE OF THE REAL PROPERTY AND ALL EASEMENTS AND RIGHTS OF WAY APPURTENANT THERETO, FOR

SAID PURPOSES, AND FOR INGRESS AND EGRESS THERETO AND THEREFROM, AND THE RIGHT TO LAY, MAINTAIN, AND OPERATE PIPELINES OVER AND ACROSS THE REAL PROPERTY FOR THE TRANSPORTATION OF OIL AND GAS, PROVIDED THAT SHOULD GRANTOR, ITS SUCCESSORS, ASSIGNS OR LESSEES IN ANY WAY DAMAGE ANY GROWING CROPS OR OTHER IMPROVEMENTS ON THE REAL PROPERTY IN EXPLOITING OR DEVELOPING THE REAL PROPERTY OR ANY PART THEREOF FOR OIL, GAS OR OTHER MINERALS, THEN THE GRANTOR SHALL PAY SUCH DAMAGES TO THE GRANTEE OR ITS SUCCESSORS AT THE TIME SUCH DAMAGE IS COMMITTED, EXCEPT INsofar AS SUCH DAMAGES ARE UNDERTAKEN AND AGREED TO BE PAID BY ANY LESSEE OF THE GRANTOR OF ITS SUCCESSORS OR ASSIGNS, AS RESERVED BY KRIESANT OPERATING COMPANY, INC., IN DEED RECORDED APRIL 5, 1988, AS INSTRUMENT NO. 88035703, OFFICIAL RECORDS.

APN: 028-101-51-S (PORTION)

PARCEL 10:

THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND MINERAL RIGHTS OF WHATSOEVER NATURE AND DESCRIPTION IN AND UNDER THE SAID REAL PROPERTY, WITH THE RIGHT TO PROSPECT FOR AND EXPLOIT THE SAME, AND TO MAKE SUFFICIENT USE OF THE SURFACE OF THE REAL PROPERTY AND ALL EASEMENTS AND RIGHTS OF WAY APPURTENANT THERETO, FOR SAID PURPOSES, AND FOR INGRESS AND EGRESS THERETO AND THEREFROM, AND THE RIGHT TO LAY, MAINTAIN, AND OPERATE PIPELINES OVER AND ACROSS THE REAL PROPERTY FOR THE TRANSPORTATION OF OIL AND GAS, PROVIDED THAT SHOULD THE GRANTOR, HER HEIRS, ASSIGNS OR LESSEES IN ANY WAY DAMAGE ANY GROWING CROPS OR OTHER IMPROVEMENTS ON THE REAL PROPERTY IN EXPLOITING OR DEVELOPING THE REAL PROPERTY OR ANY PART THEREOF FOR OIL, GAS, OR OTHER MINERALS, THEN THE GRANTOR SHALL PAY SUCH DAMAGES TO THE GRANTEE OR ITS SUCCESSORS AT THE TIME SUCH DAMAGE IS COMMITTED, EXCEPT INsofar AS SUCH DAMAGES ARE UNDERTAKEN AND AGREED TO BE PAID BY ANY LESSEE OF THE GRANTOR OR HER HEIRS OR ASSIGNS, AS RESERVED IN THE DEED DATED AUGUST 2, 1961, FROM FELITA M. KAUCHE, A WIDOW, TO KRIESANT OPERATING COMPANY, INCORPORATED, RECORDED AUGUST 21, 1961 AS INSTRUMENT NO. 60536, OFFICIAL RECORDS.

APN: 028-101-51-S (PORTION)

PARCEL 11:

THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES, AS RESERVED IN THE DEED FROM NORRINE BRADY, ET AL, TO MURIETTA FARMS COMPANY, A CORPORATION, DATED JUNE 19, 1947, RECORDED JULY 18, 1949 AS INSTRUMENT NO. 38035, OFFICIAL RECORDS.

ALSO EXCEPTING AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND MINERAL RIGHTS OF WHATSOEVER NATURE AND DESCRIPTION IN AND UNDER SAID PROPERTY, WITH THE RIGHT TO PROSPECT FOR AND EXPLOIT THE SAME, AND TO MAKE SUFFICIENT USE OF THE SURFACE OF THE REAL PROPERTY AND ALL EASEMENTS AND RIGHTS OF WAY APPURTENANT THERETO, FOR SAID PURPOSES, AND FOR INGRESS AND EGRESS THERETO AND THEREFROM, AND THE RIGHT TO LAY, MAINTAIN, AND OPERATE PIPELINES OVER AND ACROSS THE REAL PROPERTY FOR THE TRANSPORTATION OF OIL AND GAS, PROVIDED THAT SHOULD GRANTOR, ITS SUCCESSORS, ASSIGNS OR LESSEES IN ANY WAY DAMAGE ANY GROWING CROPS OR OTHER IMPROVEMENTS ON THE REAL PROPERTY IN EXPLOITING OR DEVELOPING THE REAL PROPERTY OR ANY PART THEREOF FOR OIL, GAS OR OTHER MINERALS, THEN THE GRANTOR SHALL PAY SUCH DAMAGES TO THE GRANTEE OR ITS SUCCESSORS AT THE TIME SUCH DAMAGE IS COMMITTED, EXCEPT INsofar AS SUCH DAMAGES ARE UNDERTAKEN AND AGREED TO BE PAID BY ANY LESSEE OF THE GRANTOR OF ITS SUCCESSORS OR ASSIGNS, AS RESERVED BY KRIESANT OPERATING COMPANY, INC., IN DEED RECORDED APRIL 5 , 1988, AS INSTRUMENT NO. 88035703, OFFICIAL RECORDS.

APN: 028-101-53ST

THE WEST HALF OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

APN: 028-101-70-S (PORTION)

PARCEL 1:



THE EAST HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS, PETROLEUM, PETROLEUM PRODUCTS, HYDROCARBON SUBSTANCES AND ANY OTHER MINERALS IN, UPON OR UNDER SAID PREMISES OR HEREFTER DISCOVERED IN, UPON OR UNDER THE SAME, AS RESERVED IN THE DEED FROM PAUL B. LADD AND MARGARET B. LADD, HIS WIFE, TO MURIETTA FARMS COMPANY, A CORPORATION DATED JANUARY 7, 1953, RECORDED JANUARY 21, 1953 IN BOOK 3253, PAGE 563 OF OFFICIAL RECORDS, INSTRUMENT NO. 3607.

ALSO EXCEPT THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND MINERAL RIGHTS OF WHATSOEVER NATURE AND DESCRIPTION IN AND UNDER SAID PROPERTY, WITH THE RIGHT TO PROSPECT FOR AND EXPLOIT THE SAME, AND TO MAKE SUFFICIENT USE OF THE SURFACE OF THE REAL PROPERTY AND ALL EASEMENTS AND RIGHTS OF WAY APPURTENANT THERETO, FOR SAID PURPOSES, AND FOR INGRESS AND EGRESS THERETO AND THEREFROM, AND THE RIGHT TO LAY, MAINTAIN, AND OPERATE PIPELINES OVER AND ACROSS THE REAL PROPERTY FOR THE TRANSPORTATION OF OIL AND GAS, PROVIDED THAT SHOULD GRANTOR, ITS SUCCESSORS, ASSIGNS OR LESSEES IN ANY WAY DAMAGE ANY GROWING CROPS OR OTHER IMPROVEMENTS ON THE REAL PROPERTY IN EXPLOITING OR DEVELOPING THE REAL PROPERTY OR ANY PART THEREOF FOR OIL, GAS, OR OTHER MINERALS, THEN THE GRANTOR SHALL PAY SUCH DAMAGES TO THE GRANTEE OR ITS SUCCESSORS AT THE TIME SUCH DAMAGE IS COMMITTED, EXCEPT INsofar AS SUCH DAMAGES ARE UNDERTAKEN AND AGREED TO BE PAID BY ANY LESSEE OF THE GRANTOR OR ITS SUCCESSORS OR ASSIGNS, AS RESERVED IN THE DEED FROM KRIESANT OPERATING COMPANY, INCORPORATED, RECORDED APRIL 4, 1988 AS INSTRUMENT NO. 88035714, OFFICIAL RECORDS.

APN: 028-101-70-S (PORTION)

PARCEL 2:

THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND MINERAL RIGHTS OF WHATSOEVER NATURE AND DESCRIPTION IN AND UNDER SAID PROPERTY, WITH THE RIGHT TO PROSPECT FOR AND EXPLOIT THE SAME, AND TO MAKE SUFFICIENT USE OF THE SURFACE OF THE REAL PROPERTY AND ALL EASEMENTS AND RIGHTS OF WAY APPURTENANT THERETO, FOR SAID PURPOSES, AND FOR INGRESS AND EGRESS THERETO AND THEREFROM, AND THE RIGHT TO LAY, MAINTAIN, AND OPERATE PIPELINES OVER AND ACROSS THE REAL PROPERTY FOR THE TRANSPORTATION OF OIL AND GAS, PROVIDED THAT SHOULD GRANTOR, ITS SUCCESSORS, ASSIGNS OR LESSEES IN ANY WAY DAMAGE ANY GROWING CROPS OR OTHER IMPROVEMENTS ON THE REAL PROPERTY IN EXPLOITING OR DEVELOPING THE REAL PROPERTY OR ANY PART THEREOF FOR OIL, GAS, OR OTHER MINERALS, THEN THE GRANTOR SHALL PAY SUCH DAMAGES TO THE GRANTEE OR ITS SUCCESSORS AT THE TIME SUCH DAMAGE IS COMMITTED, EXCEPT INsofar AS SUCH DAMAGES ARE UNDERTAKEN AND AGREED TO BE PAID BY ANY LESSEE OF THE GRANTOR OR ITS SUCCESSORS OR ASSIGNS, AS RESERVED IN THE DEED FROM KRIESANT OPERATING COMPANY, INCORPORATED, RECORDED APRIL 4, 1988 AS INSTRUMENT NO. 88035714, OFFICIAL RECORDS.

APN: 028-101-70-S (PORTION)

PARCEL 6:

THE NORTHEAST QUARTER OF SECTION 35, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS, PETROLEUM, PETROLEUM PRODUCTS, HYDROCARBON SUBSTANCES AND ANY OTHER MINERALS IN, UPON OR UNDER SAID PREMISES OR HEREAFTER DISCOVERED IN, UPON OR UNDER THE SAME, AS RESERVED IN THE DEED FROM PAUL B. LADD AND MARGARET B. LADD, HIS WIFE, TO MURIETTA FARMS COMPANY, A CORPORATION DATED JANUARY 7, 1953, RECORDED JANUARY 21, 1953 IN BOOK 3253, PAGE 563 OF OFFICIAL RECORDS, INSTRUMENT NO. 3607.

ALSO EXCEPT THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND MINERAL RIGHTS OF WHATSOEVER NATURE AND DESCRIPTION IN AND UNDER SAID PROPERTY, WITH THE RIGHT TO PROSPECT FOR AND

EXPLOIT THE SAME, AND TO MAKE SUFFICIENT USE OF THE SURFACE OF THE REAL PROPERTY AND ALL EASEMENTS AND RIGHTS OF WAY APPURTENANT THERETO, FOR SAID PURPOSES, AND FOR INGRESS AND EGRESS THERETO AND THEREFROM, AND THE RIGHT TO LAY, MAINTAIN, AND OPERATE PIPELINES OVER AND ACROSS THE REAL PROPERTY FOR THE TRANSPORTATION OF OIL AND GAS, PROVIDED THAT SHOULD GRANTOR, ITS SUCCESSORS, ASSIGNS OR LESSEES IN ANY WAY DAMAGE ANY GROWING CROPS OR OTHER IMPROVEMENTS ON THE REAL PROPERTY IN EXPLOITING OR DEVELOPING THE REAL PROPERTY OR ANY PART THEREOF FOR OIL, GAS, OR OTHER MINERALS, THEN THE GRANTOR SHALL PAY SUCH DAMAGES TO THE GRANTEE OR ITS SUCCESSORS AT THE TIME SUCH DAMAGE IS COMMITTED, EXCEPT INsofar AS SUCH DAMAGES ARE UNDERTAKEN AND AGREED TO BE PAID BY ANY LESSEE OF THE GRANTOR OR ITS SUCCESSORS OR ASSIGNS, AS RESERVED IN THE DEED FROM KRIESANT OPERATING COMPANY, INCORPORATED, RECORDED APRIL 4, 1988 AS INSTRUMENT NO. 88035714, OFFICIAL RECORDS.

**GROUP C**

APN 028-101-23S

PARCEL 2

THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 15 SOUTH, RANGE 24 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM ONE-HALF OF ALL MINERAL RIGHTS, OIL AND GAS RIGHTS, AND RIGHTS TO OTHER HYDROCARBON SUBSTANCES AS RESERVED BY WILLIAM C. MEUX AND ANNE MEUX SIEGFRIED IN THE DEED RECORDED JULY 3, 1984.

**GROUP D**

APN: 028-101-22

PARCEL 1

THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 25, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

**GROUP E**

APN: 038-320-17T

THE FRACTIONAL NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING AND RESERVING UNTO THE GRANTOR ALL OF GRANTOR'S RIGHT, TITLE AND INTEREST IN AND TO ALL OIL, GAS, MINERALS AND HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN GRANT DEED RECORDED JUNE 2, 2009 AS DOCUMENT NO. 2009-0074108 OF OFFICIAL RECORDS.

APN: 038-320-18ST

THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT ALL OF THE MINERALS, OIL AND GAS AND MINERALS, OIL AND GAS RIGHTS IN, TO, UNDER AND ON THE SAID PROPERTY, AS RESERVED IN THE DEED FROM ANNA FRANCES ALLEN AND S. J. HUGH ALLEN TO SUMNER PECK RANCH, INC., A CORPORATION, DATED MARCH 26, 1962, RECORDED APRIL 4, 1962 IN BOOK 4701, PAGE 545 OF OFFICIAL RECORDS, DOCUMENT NO. 27569.

APN: 038-320-23ST

THE FRACTIONAL NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE FOLLOWING

DESCRIBED PARCEL:

THAT PORTION OF THE EAST HALF OF SECTION 1, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 1;

THENCE (1) ALONG THE SOUTH LINE OF SAID SECTION 1, NORTH  $89^{\circ} 0' 17''$  WEST 141.64 FEET;

THENCE (2) NORTH  $60^{\circ} 55' 20''$  EAST, 82.73 FEET;

THENCE (3) ALONG THE WEST LINE OF THE EAST 70 FEET OF SAID SECTION 1, NORTH  $0^{\circ} 55' 34''$  EAST, 3545.43 FEET;

THENCE (4) NORTHERLY ALONG A TANGENT CURVE CONCAVE EASTERLY WITH A RADIUS OF 16,050 FEET THROUGH AN ANGLE OF  $1^{\circ} 49' 26''$ , AN ARC DISTANCE OF 510.92 FEET;

THENCE (5) NORTH  $2^{\circ} 45' 0''$  EAST, 698.09 FEET;

THENCE (6) NORTHERLY, ALONG A TANGENT CURVE CONCAVE WESTERLY, WITH A RADIUS OF 19,950 FEET, THROUGH AN ANGLE OF  $1^{\circ} 19' 0''$  EAST, AN ARC DISTANCE OF 458.45 FEET;

THENCE (7) ALONG A NON-TANGENT LINE NORTH  $58^{\circ} 41' 10''$  WEST 82.67 FEET TO THE NORTH LINE OF SAID SECTION 1;

THENCE (8) ALONG SAID NORTH LINE, SOUTH  $88^{\circ} 49' 15''$  EAST 101.64 FEET TO THE NORTHWEST CORNER OF SAID SECTION 6, TOWNSHIP 16 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN;

THENCE (9) ALONG THE NORTH LINE OF SAID SECTION 6, SOUTH  $88^{\circ} 30' 50''$  EAST, 141.64 FEET;

THENCE (10) SOUTH  $61^{\circ} 18' 50''$  WEST, 82.77 FEET;

THENCE ALONG A LINE PARALLEL WITH AND 100 FEET EASTERLY, MEASURED RADially AND AT RIGHT ANGLES FROM THE ABOVE DESCRIBED COURSES (6), (5), (4) AND (3) THE FOLLOWING COURSES:

(11) FROM A TANGENT WHICH BEARS SOUTH  $1^{\circ} 26' 0''$  WEST SOUTHERLY ALONG A CURVE CONCAVE WESTERLY WITH A RADIUS OF 20,050 FEET, THROUGH AN ANGLE OF  $1^{\circ} 19' 0''$  AN ARC DISTANCE OF 460.75 FEET; (12) SOUTH  $2^{\circ} 45' 0''$  WEST, 698.09 FEET; (13) SOUTHERLY, ALONG A TANGENT CURVE CONCAVE EASTERLY WITH A RADIUS OF 15,950 FEET, THROUGH AN ANGLE OF  $1^{\circ} 49' 26''$  AN ARC DISTANCE OF 507.73 FEET AND (14) SOUTH  $0^{\circ}$

55' 34" WEST, 3546.17 FEET;

THENCE (15) SOUTH 59° 04' 40" EAST, 82.72 FEET TO THE SOUTH LINE OF SAID SECTION 6;

THENCE (16) ALONG LAST SAID SOUTH LINE, NORTH 88° 45' 47" WEST, 101.65 FEET TO THE POINT OF BEGINNING.

EXCEPTING AND RESERVING UNTO THE GRANTOR ALL OF GRANTOR'S RIGHT, TITLE AND INTEREST IN AND TO ALL OIL, GAS, MINERALS AND HYDROCARBON SUBSTANCES IN, ON OR UNDER SAID LAND, AS RESERVED IN GRANT DEED RECORDED JUNE 2, 2009 AS DOCUMENT NO. 2009-0074108 OF OFFICIAL RECORDS.

#### **GROUP F**

APN: 038-320-01ST

LOTS 31 AND 32 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE MAP OF A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912, IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

APN: 038-320-06ST

LOTS 17 AND 18 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE MAP OF SUBDIVISION OF SAID SECTION, BEING A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912, IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS;

EXCEPTING THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN AND TO ALL OIL, GAS AND HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREFTER SITUATE THEREIN AND THEREUNDER, AS RESERVED IN THE DEED FROM EDWARD T. LAUGHLIN AND JEANNE B. LAUGHLIN, TO KRIESANT OPERATING COMPANY, INCORPORATED, DATED JULY 10, 1969, RECORDED AUGUST 12, 1969, AS DOCUMENT NO. 55354, OFFICIAL RECORDS;

ALSO EXCEPTING AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND MINERAL RIGHTS OF WHATSOEVER NATURE AND DESCRIPTION IN AND UNDER SAID PROPERTY, WITH THE RIGHT TO PROSPECT FOR AND EXPLOIT THE SAME, AND TO MAKE SUFFICIENT USE OF THE SURFACE OF THE REAL PROPERTY AND ALL EASEMENTS AND RIGHTS OF WAY APPURTENANT THERETO, FOR

SAID PURPOSES, AND FOR INGRESS AND EGRESS THERETO AND THEREFROM, AND THE RIGHT TO LAY, MAINTAIN, AND OPERATE PIPELINES OVER AND ACROSS THE REAL PROPERTY FOR THE TRANSPORTATION OF OIL AND GAS, PROVIDED THAT SHOULD GRANTOR, ITS SUCCESSORS, ASSIGNS OR LESSEES IN ANY WAY DAMAGE ANY GROWING CROPS OR OTHER IMPROVEMENTS ON THE REAL PROPERTY IN EXPLOITING OR DEVELOPING THE REAL PROPERTY OR ANY PART THEREOF FOR OIL, GAS OR OTHER MINERALS, THEN THE GRANTOR SHALL PAY SUCH DAMAGES TO THE GRANTEE OR ITS SUCCESSORS AT THE TIME SUCH DAMAGE IS COMMITTED, EXCEPT INsofar AS SUCH DAMAGES ARE UNDERTAKEN AND AGREED TO BE PAID BY ANY LESSEE OF THE GRANTOR OF ITS SUCCESSORS OR ASSIGNS, AS RESERVED BY KRIESANT OPERATING COMPANY, INC., IN DEED RECORDED APRIL 5, 1988, AS DOCUMENT NO. 88035706, OFFICIAL RECORDS.

APN: 038-320-24ST

LOT 16 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE MAP OF A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912, IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS;

EXCEPTING THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND MINERAL RIGHTS OF WHATSOEVER NATURE AND DESCRIPTION IN AND UNDER SAID PROPERTY, WITH THE RIGHT TO PROSPECT FOR AND EXPLOIT THE SAME, AND TO MAKE SUFFICIENT USE OF THE SURFACE OF THE REAL PROPERTY AND ALL EASEMENTS AND RIGHTS OF WAY APPURTENANT THERETO, FOR SAID PURPOSES, AND FOR INGRESS AND EGRESS THERETO AND THEREFROM, AND THE RIGHT TO LAY, MAINTAIN, AND OPERATE PIPELINES OVER AND ACROSS THE REAL PROPERTY FOR THE TRANSPORTATION OF OIL AND GAS, PROVIDED THAT SHOULD GRANTOR, ITS SUCCESSORS, ASSIGNS OR LESSEES IN ANY WAY DAMAGE ANY GROWING CROPS OR OTHER IMPROVEMENTS ON THE REAL PROPERTY IN EXPLOITING OR DEVELOPING THE REAL PROPERTY OR ANY PART THEREOF FOR OIL, GAS OR OTHER MINERALS, THEN THE GRANTOR SHALL PAY SUCH DAMAGES TO THE GRANTEE OR ITS SUCCESSORS AT THE TIME SUCH DAMAGE IS COMMITTED, EXCEPT INsofar AS SUCH DAMAGES ARE UNDERTAKEN AND AGREED TO BE PAID BY ANY LESSEE OF THE GRANTOR OF ITS SUCCESSORS OR ASSIGNS, AS RESERVED BY KRIESANT OPERATING COMPANY, INC., IN DEEDS RECORDED APRIL 5, 1988, AS DOCUMENT NOS. 88035703 AND 88035704, OFFICIAL RECORDS, RESPECTIVELY.

APN: 038-320-25ST

LOT 15 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE MAP OF A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912, IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS;

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND MINERAL RIGHTS OF WHATSOEVER NATURE AND DESCRIPTION IN AND UNDER SAID PROPERTY, WITH THE RIGHT TO PROSPECT FOR AND EXPLOIT THE SAME, AND TO MAKE SUFFICIENT USE OF THE SURFACE OF THE REAL PROPERTY AND ALL EASEMENTS AND RIGHTS OF WAY APPURTENANT THERETO, FOR SAID PURPOSES, AND FOR INGRESS AND EGRESS THERETO AND THEREFROM, AND THE RIGHT TO LAY, MAINTAIN, AND OPERATE PIPELINES OVER AND ACROSS THE REAL PROPERTY FOR THE TRANSPORTATION OF OIL AND GAS, PROVIDED THAT SHOULD GRANTOR, ITS SUCCESSORS, ASSIGNS OR LESSEES IN ANY WAY DAMAGE ANY GROWING CROPS OR OTHER IMPROVEMENTS ON THE REAL PROPERTY IN EXPLOITING OR DEVELOPING THE REAL PROPERTY OR ANY PART THEREOF FOR OIL, GAS OR OTHER MINERALS, THEN THE GRANTOR SHALL PAY SUCH DAMAGES TO THE GRANTEE OR ITS SUCCESSORS AT THE TIME SUCH DAMAGE IS COMMITTED, EXCEPT INsofar AS SUCH DAMAGES ARE UNDERTAKEN AND AGREED TO BE PAID BY ANY LESSEE OF THE GRANTOR OF ITS SUCCESSORS OR ASSIGNS, AS RESERVED BY KRIESANT OPERATING COMPANY, INC., IN DEED RECORDED APRIL 5, 1988, AS DOCUMENT NO. 88035705, OFFICIAL RECORDS.

APN: 038-320-27ST

LOT 3 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE MAP OF SUBDIVISION OF SAID SECTION, BEING A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912, IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS;

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND MINERALS WITHIN OR UNDERLYING SAID PROPERTY, AS RESERVED IN THE DEED FROM HARRY KIRKPATRICK THE DULY APPOINTED, QUALIFIED AND ACTING ADMINISTRATOR OF THE ESTATE OF ALEXANDER KIRKPATRICK, ALSO KNOWN AS ALEX KIRKPATRICK, DECEASED, TO MURIETTA FARMS COMPANY, A CORPORATION, DATED APRIL 5, 1948, RECORDED MAY 6, 1948, AS



DOCUMENT NO. 22420, OFFICIAL RECORDS.

APN: 038-320-28ST

LOT 14 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE MAP OF SUBDIVISION OF SAID SECTION, BEING A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912, IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS;

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND MINERALS WITHIN OR UNDERLYING SAID PROPERTY, AS RESERVED IN THE DEED FROM HARRY KIRKPATRICK THE DULY APPOINTED, QUALIFIED AND ACTING ADMINISTRATOR OF THE ESTATE OF ALEXANDER KIRKPATRICK, ALSO KNOWN AS ALEX KIRKPATRICK, DECEASED, TO MURIETTA FARMS COMPANY, A CORPORATION, DATED APRIL 5, 1948, RECORDED MAY 6, 1948, AS DOCUMENT NO. 22420, OFFICIAL RECORDS.

APN: 038-320-16T

LOT 1, SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE MAP OF PART OF CALIFORNIA LAND INVESTMENT CO'S TRACT NO. 1, RECORDED IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF FRESNO COUNTY ON MAY 8, 1912.

APN: 038-320-30ST

LOT 2 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE MAP OF SUBDIVISION OF SAID SECTION, BEING A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912, IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS;

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND MINERALS WITHIN OR UNDERLYING SAID PROPERTY, AS RESERVED IN THE DEED FROM HARRY KIRKPATRICK THE DULY APPOINTED, QUALIFIED AND ACTING ADMINISTRATOR OF THE ESTATE OF ALEXANDER KIRKPATRICK, ALSO KNOWN AS ALEX

KIRKPATRICK, DECEASED, TO MURIETTA FARMS COMPANY, A CORPORATION, DATED APRIL 5, 1948, RECORDED MAY 6, 1948, AS DOCUMENT NO. 22420, OFFICIAL RECORDS.

**GROUP G**

APN: 038-320-29ST

LOT 19 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE MAP OF SUBDIVISION OF SAID SECTION, BEING A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912, IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS;

EXCEPT ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND MINERALS WITHIN OR UNDERLYING SAID PROPERTY, AS RESERVED IN THE DEED FROM HARRY KIRKPATRICK THE DULY APPOINTED, QUALIFIED AND ACTING ADMINISTRATOR OF THE ESTATE OF ALEXANDER KIRKPATRICK, ALSO KNOWN AS ALEX KIRKPATRICK, DECEASED, TO MURIETTA FARMS COMPANY, A CORPORATION, DATED APRIL 5, 1948, RECORDED MAY 6, 1948, AS DOCUMENT NO. 22420, OFFICIAL RECORDS.

**GROUP H**

APN: 038-320-02T

LOTS 20, 29, AND 30 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 7, PAGE 49 OF RECORDS OF SURVEYS, FRESNO COUNTY OFFICIAL RECORDS.

**GROUP I**

APN: 038-320-37ST

LOT 13 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE MAP OF SUBDIVISION OF SAID SECTION, BEING A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912, IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS;

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND MINERALS WITHIN OR UNDERLYING SAID PROPERTY, AS RESERVED IN THE DEED FROM HARRY KIRKPATRICK

THE DULY APPOINTED, QUALIFIED AND ACTING ADMINISTRATOR OF THE ESTATE OF ALEXANDER KIRKPATRICK, ALSO KNOWN AS ALEX KIRKPATRICK, DECEASED, TO MURIETTA FARMS COMPANY, A CORPORATION, DATED APRIL 5, 1948, RECORDED MAY 6, 1948, AS DOCUMENT NO. 22420, OFFICIAL RECORDS.

**GROUP J**

APN: 038-320-38ST

LOT 12 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE MAP OF SUBDIVISION OF SAID SECTION, BEING A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912, IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY, RECORDS.

**GROUP K**

APN: 028-111-60 (PORTION)

PARCEL 10:

THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THE WEST 246.90 FEET OF THE SOUTH 208.71 FEET THEREOF.

ALSO EXCEPTING THEREFROM THE NORTH 260 FEET OF THE WEST 260 FEET THEREOF.

ALSO EXCEPTING THEREFROM ALL THAT PORTION THEREOF AS GRANTED TO THE STATE OF CALIFORNIA BY DEED RECORDED MAY 23, 1960 IN BOOK 4391, PAGE 417 OF OFFICIAL RECORDS, DOCUMENT NO. 37076.

APN: 028-111-60 (PORTION)

PARCEL 11:

THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT ALL OF THE OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATE THEREIN AND THEREUNDER, AS RESERVED IN THE DEED DATED APRIL 29, 1959 FROM J.J. IMPERATRICE, ALSO KNOWN AS JAMES J. IMPERATRICE AND EVELYN IMPERATRICE, HUSBAND AND WIFE, AS JOINT TENANTS, RECORDED JULY 21, 1959 IN BOOK 4250, PAGE 484 OF OFFICIAL RECORDS, DOCUMENT NO. 50988.

APN: 028-111-60 (PORTION)

PARCEL 12:

THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

APN: 028-111-50 (PORTION)

PARCEL 8:

THE SOUTH 208.71 FEET OF THE WEST 208.71 FEET OF NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF DESCRIBED AS FOLLOWS: THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION, SAID SOUTHWEST CORNER BEING AT COORDINATES Y=457 347.300 FEET AND X=1 592517.377 FEET;

THENCE (1) ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION, SOUTH  $88^{\circ} 36' 17''$  EAST, 141.64 FEET; THENCE (2) NORTH  $58^{\circ} 41' 15''$  WEST 82.72 FEET TO THE EAST LINE OF THE WEST 70 FEET OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE (3) ALONG SAID EAST LINE, NORTH  $01^{\circ} 18' 45''$  EAST, 167.45 FEET TO THE NORTH LINE OF THE SOUTH 208.71 FEET OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE (4) ALONG SAID NORTH LINE, NORTH  $88^{\circ} 36' 17''$  WEST, 70.00 FEET TO THE WEST LINE OF SAID SECTION; THENCE (5) ALONG SAID WEST LINE, SOUTH  $01^{\circ} 18' 45''$  WEST, 208.71 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM ALL THAT PORTION THEREOF DESCRIBED AS FOLLOWS: THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION, SAID POINT BEARS SOUTH 88° 36' 17" EAST, 141.64 FEET FROM THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION, SAID SOUTHWEST CORNER BEING AT COORDINATES Y=457347.300 FEET AND X=1592 527.377 FEET; THENCE (1) NORTH 58° 41' 15" WEST 82.72 FEET TO THE EAST LINE OF THE WEST 70 FEET OF SAID SECTION; THENCE (2) ALONG SAID EAST LINE, NORTH 01° 16' 45" EAST, 167.45 FEET TO THE NORTH LINE OF THE SOUTH 208.71 FEET OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE (3) ALONG SAID NORTH LINE, SOUTH 88° 36' 17" EAST, 20.00 FEET; THENCE (4) ALONG A LINE PARALLEL WITH COURSE (2) HEREINABOVE DESCRIBED, SOUTH 01° 18' 45" WEST, 75.00 FEET, THENCE (5) SOUTH 37° 40' 53" EAST, 82.07 FEET; THENCE (6) ALONG A LINE PARALLEL WITH COURSE (2) HEREINABOVE DESCRIBED, SOUTH 01° 18' 45" WEST, 70.00 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS LYING THEREIN AND THEREUNDER, TOGETHER WITH ALL EASEMENTS AND RIGHTS

APN: 028-111-50 (PORTION)

PARCEL 9:

ALL THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION, SAID POINT BEARS SOUTH 88° 36' 17" EAST, 208.71 FEET FROM THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION, SAID SOUTHWEST CORNER BEING AT COORDINATES Y=457 347.33 AND X=1 592 517.377 FEET; THENCE (.1) NORTH 01° 18' 45" EAST, 208.71 FEET TO THE NORTH LINE OF THE SOUTH 208.71 FEET OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE (2) ALONG SAID NORTH LINE, SOUTH 88° 36' 17" EAST, 38.19 FEET; THENCE (3) ALONG A LINE PARALLEL WITH COURSE (1) HEREINABOVE DESCRIBED, SOUTH 01° 18' 45" WEST, 208.71 FEET TO SAID SOUTH LINE; THENCE (4) ALONG SAID

SOUTH LINE, NORTH 88° 36' 17" WEST, 38.19 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS THEREIN AND THEREUNDER AS GRANTED TO MURIEL SIGRID KOHLER BY DECREE OF DISTRIBUTION RECORDED APRIL 12, 1944 IN BOOK 2165, PAGE 162, FRESNO COUNTY RECORDS.

**GROUP L**

APN: 028-111-52

PARCEL 1:

THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THE FOLLOWING:

COMMENCING AT A POINT FORMING THE SOUTHWEST CORNER OF SAID SECTION 31; THENCE NORTHERLY ALONG THE WEST LINE OF SAID SECTION, 360 FEET; THENCE AT RIGHT ANGLES EASTERLY 360 FEET; THENCE AT RIGHT ANGLES SOUTHERLY 360 FEET TO THE SOUTH LINE OF SAID SECTION; THENCE AT RIGHT ANGLES WESTERLY TO THE POINT OF BEGINNING;

ALSO EXCEPT THEREFROM ANY PORTION THEREOF WHICH LIES WITHIN THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID SOUTHWEST CORNER BEING AT COORDINATES Y=454694.379 FEET AND X=1592456.595 FEET; THENCE (1) ALONG THE SOUTH LINE OF SAID SECTION 31, SOUTH 88° 30' 55" EAST 141.64 FEET; THENCE (2) NORTH 58° 41' 15" WEST 82.72 FEET TO THE EAST LINE OF THE WEST 70 FEET OF THE SOUTHWEST QUARTER OF SAID SECTION 31; THENCE (3) ALONG SAID EAST LINE NORTH 01° 18' 45" EAST 2571.30 FEET; THENCE (4) NORTH 61° 18' 45" EAST 82.72 FEET TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 31; THENCE (5) ALONG SAID NORTH LINE NORTH 88° 36' 17" WEST 141.64 FEET TO THE WEST LINE OF SAID SECTION 31; THENCE (6) ALONG SAID WEST LINE NORTH 01° 18' 45" EAST 2654.80 FEET TO THE NORTHWEST CORNER OF SAID SECTION 31; THENCE (7) ALONG THE NORTH LINE OF SAID SECTION 36 NORTH 88° 53' 39" WEST 101.64 FEET; THENCE (8) SOUTH 58° 41' 15" EAST 82.72 FEET TO THE WEST LINE OF THE EAST 30 FEET OF SAID SECTION 36; THENCE (9) ALONG EAST SAID WEST LINE SOUTH 01° 18' 45" WEST 5224.75

FEET; THENCE (10) SOUTH 61° 18' 45" WEST 82.72 FEET TO THE SOUTH LINE OF SAID SECTION 36; THENCE (11) ALONG LAST SAID SOUTH LINE SOUTH 88° 49' 20" EAST 101.64 FEET TO THE POINT OF BEGINNING;

ALSO EXCEPT THEREFROM ONE-HALF OF ALL THE OIL, GAS AND MINERALS WITHIN SAID LAND AND ONE-HALF OF ALL OIL, GAS AND MINERAL RIGHTS IN AND TO ANY OF SUCH PRODUCTS EXTRACTED FROM SAID LAND, AS RESERVED IN THE DEED FROM I. TEILMAN AND ANNIE K. TEILMAN, HIS WIFE, TO F.A. YEAROUT, DATED MAY 2, 1941 AND RECORDED MAY 15, 1941 IN BOOK 1946 PAGE 309 OF OFFICIAL RECORDS, DOCUMENT NO. 17541;

ALSO EXCEPTING AND RESERVING UNTO FLOYD A. YEAROUT, AN UNDIVIDED 3/16THS INTEREST (18 3/4% OUT OF 100%) AND UNTO RAYMOND L. YEAROUT, AN UNDIVIDED 1/16THS INTEREST (6 1/4% OUT OF 100%) IN AND TO ALL OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS LOCATED IN, ON OR UNDER THE REAL PROPERTY ABOVE DESCRIBED, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS TO SAID PROPERTY FOR THE PURPOSE OF EXTRACTING OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS FROM SAID PROPERTY AND TOGETHER WITH ALL OTHER RIGHTS NECESSARY FOR SAID PURPOSES, AS RESERVED IN THE DEED FROM FLOYD A. YEAROUT, ALSO KNOWN AS F. A. YEAROUT AND ANNA V. YEAROUT, HIS WIFE, RAYMOND L. YEAROUT AND WILDA YEAROUT, HIS WIFE, TO SUMNER PECK RANCH, INC., A CORPORATION, DATED FEBRUARY 10, 1952, RECORDED FEBRUARY 18, 1952 IN BOOK 3124 PAGE 527 OF OFFICIAL RECORDS, DOCUMENT NO. 8803.

APN: 028-111-53

PARCEL 2:

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF. COMMENCING AT A POINT FORMING THE SOUTHWEST CORNER OF SAID SECTION 31; THENCE NORTHERLY ALONG THE WEST LINE OF SAID SECTION 360 FEET; THENCE AT RIGHT ANGLES EASTERLY 360 FEET; THENCE AT RIGHT ANGLE SOUTHERLY 360 FEET TO THE SOUTH LINE OF SAID SECTION; THENCE AT RIGHT ANGLES WESTERLY TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ANY PORTION THEREOF WHICH LIES WITHIN THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID SOUTHWEST CORNER BEING AT COORDINATES Y=454694.379 FEET AND X=1592456.595 FEET; THENCE (1) ALONG THE SOUTH LINE OF SAID SECTION 31, SOUTH 88° 30' 55" EAST 141.64 FEET; THENCE (2) NORTH 58° 41' 15" WEST 82.72 FEET TO THE EAST LINE OF THE WEST 70 FEET OF THE SOUTHWEST QUARTER OF SAID SECTION 31; THENCE (3) ALONG SAID EAST LINE NORTH 01° 18' 45" EAST 2571.30 FEET; THENCE (4) NORTH 61° 18' 45" EAST 82.72 FEET TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 31; THENCE (5) ALONG SAID NORTH LINE NORTH 88° 36' 17" WEST 141.64 FEET TO THE WEST LINE OF SAID SECTION 31; THENCE (6) ALONG SAID WEST LINE NORTH 01° 18' 45" EAST 2654.80 FEET TO THE NORTHWEST CORNER OF SAID SECTION 31; THENCE (7) ALONG THE NORTH LINE OF SAID SECTION 36 NORTH 88° 53' 39" WEST 101.64 FEET; THENCE (8) SOUTH 58° 41' 15" EAST 82.72 FEET TO THE WEST LINE OF THE EAST 30 FEET OF SAID SECTION 36; THENCE (9) ALONG EAST SAID WEST LINE SOUTH 01° 18' 45" WEST 5224.75 FEET; THENCE (10) SOUTH 61° 18' 45" WEST 82.72 FEET TO THE SOUTH LINE OF SAID SECTION 36; THENCE (11) ALONG LAST SAID SOUTH LINE SOUTH 88° 49' 20" EAST 101.64 FEET TO THE POINT OF BEGINNING;

ALSO EXCEPT THEREFROM ONE-HALF OF ALL THE OIL, GAS AND MINERALS WITHIN SAID LAND AND ONE-HALF OF ALL OIL, GAS AND MINERAL RIGHTS IN AND TO ANY OF SUCH PRODUCTS EXTRACTED FROM SAID LAND, AS RESERVED IN THE DEED FROM I. TEILMAN AND ANNIE K. TEILMAN, HIS WIFE, TO F.A. YEAROUT, DATED MAY 2, 1941 AND RECORDED MAY 15, 1941 IN BOOK 1946 PAGE 309 OF OFFICIAL RECORDS, DOCUMENT NO. 17541.

#### **GROUP M**

APN: 028-111-47 (PORTION)

PARCEL 6:

THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM ONE-HALF OF ALL OIL, GAS AND MINERALS AS RESERVED IN THE DEED FROM FLORENCE H. DE FOE AND FRANCIS A. ORFF, A MARRIED MAN, RECORDED JANUARY 6, 1965, AS DOCUMENT NO. 724.

APN: 028-111-47 (PORTION)



PARCEL 7:

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT THEREFROM AN UNDIVIDED 50% OF 100% INTEREST IN AND TO ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS (EXCEPT WATER) LYING UNDER THE SURFACE OF SAID LAND, AS RESERVED BY CARL C. DUNCAN AND MARY L. DUNCAN, HUSBAND AND WIFE IN DEED RECORDED OCTOBER 24, 1968, AS DOCUMENT NO. 76120.

**GROUP N**

APN: 028-111-46

PARCEL 5:

THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

**GROUP O**

APN: 028-111-45

PARCEL 4:

THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

TOGETHER WITH A NON-EXCLUSIVE RIGHT OF WAY FOR AN IRRIGATION DITCH OVER THE SOUTH 20 FEET OF THE EAST THREE-FOURTHS OF THE SOUTHEAST QUARTER AND OVER THE WEST 20 FEET OF THE NORTH THREE-FOURTHS OF THE SOUTHEAST QUARTER OF SAID SECTION 31, AS GRANTED TO FRANCIS ORFF, ET UX, BY DEED DATED AUGUST 19, 1959, RECORDED OCTOBER 13, 1959 IN BOOK 4285, PAGE 390 OF OFFICIAL RECORDS, DOCUMENT NO. 72710.

**GROUP P**

APN: 028-111-44

PARCEL 3:

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

TOGETHER WITH A NON- EXCLUSIVE RIGHT OF WAY FOR AN IRRIGATION DITCH OVER THE WEST 20 FEET OF THE SOUTHEAST QUARTER OF SECTION 31, AND THE SOUTH 20 FEET OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION.

EXCEPTING THEREFROM AN UNDIVIDED 25% INTEREST IN AN TO ALL OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM IN AND WATER UNDER SAID REAL PROPERTY AS RESERVED BY ANNETTE MARIE TYLER IN DEED FROM RAPHAEL G. TYLER AND ELIZABETH G. TYLER, HUSBAND AND WIFE; ANNETTE M. TYLER AND MADELINE F. TYLER, BOTH SINGLE WOMEN TO VESTEES HEREIN RECORDED FEBRUARY 22, 1978, AS DOCUMENT NO. 19078.

ALSO EXCEPTING THEREFROM AN UNDIVIDED 25% INTEREST IN AN TO ALL OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM IN AND UNDER SAID REAL PROPERTY AS RESERVED BY MADELINE FRANCES TYLER IN DEED BY AND BETWEEN RAPHAEL G. TYLER AND ELIZABETH G. TYLER, HUSBAND AND WIFE; ANNETTE M. TYLER AND MADELINE F. TYLER, BOTH SINGLE WOMEN TO VESTEES HEREIN, RECORDED FEBRUARY 22, 1978, AS DOCUMENT NO. 19074.

**GROUP Q**

APN:038-080-35S

PARCEL 1:

THE FRACTIONAL NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 16 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF;

EXCEPTING THEREFROM THAT PORTION OF THE NORTHWEST QUARTER OF SAID SECTION 6, AS DEEDED TO THE STATE OF CALIFORNIA IN DEEDS RECORDED OCTOBER 16, 1972 IN BOOK 6080 PAGE 842 AND IN BOOK 6080 PAGE 848 AND RE-RECORDED IN BOOK 6124 PAGE 511, FRESNO COUNTY RECORDS.

ALSO EXCEPTING THEREFROM ALL THAT PORTION OF SAID PROPERTY CONVEYED TO THE STATE OF CALIFORNIA, BY DEED RECORDED FEBRUARY 6, 1973 IN BOOK 6124 PAGE 511 OF OFFICIAL RECORDS, DOCUMENT NO. 12208;

ALSO EXCEPTING THEREFROM 50% OF ALL MINERALS, OIL AND GAS PRODUCED, FOUND, SAVED OR RECOVERED FROM OR ON SAID REAL PROPERTY HEREINABOVE DESCRIBED, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS TO AND FROM SAID REAL PROPERTY FOR THE PURPOSE OF EXPLORING FOR, PRODUCING, OR EXPLOITING SAID MINERALS, OIL AND GAS, AND UPON THE SUCCESSFUL EXPLORATION THEREOF, THE RIGHT TO DRILL, CONSTRUCT AND ERECT DERRICKS, WELLS, MACHINERY, MINES, SHAFTS, PIPELINES, ROADS, TANKS, RESERVOIRS AND OTHER WORKS, FOR THE EXPLORATION, PRODUCTION, RECOVERY AND REMOVAL OF SAID MINERALS, OIL AND GAS, PROVIDED, HOWEVER, ALL OF SAID RIGHTS SHALL BE EXERCISED SO AS TO DO AS LITTLE DAMAGE AS POSSIBLE TO THE SURFACE AND THE GROWING CROPS AND THE IMPROVEMENTS THEREON, AND GRANTORS, THEIR HEIRS, EXECUTORS, ADMINISTRATORS AND ASSIGNS SHALL BE LIABLE FOR ANY DAMAGE TO OR INJURY OR LOSS OF SUCH GROWING CROPS OR IMPROVEMENTS RESULTING FROM THE EXERCISE OF ANY OF THE RIGHTS HEREINABOVE CONTAINED, AS RESERVED IN THE DEED FROM KEITH D. SUTHERLAND AND ELEANOR W. SUTHERLAND, HUSBAND AND WIFE, DATED NOVEMBER 30, 1960 TO SUMNER PECK RANCH, INC., A CALIFORNIA CORPORATION, RECORDED JANUARY 16, 1961 AS DOCUMENT NO. 3729.

#### **GROUP R**

APN:038-080-03S

#### **PARCEL 2:**

THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 16 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM ONE-HALF OF ALL THE OIL, GAS AND MINERALS WITHIN SAID LAND, AND ONE-HALF OF ALL OIL, GAS AND MINERAL RIGHTS IN AND TO ANY OF SUCH PRODUCTS EXTRACTED FROM SAID LAND, AS RESERVED IN THE DEED FROM I. TEILMAN AND ANNIE K. TEILMAN, HIS WIFE, TO F. A. YEAROUT, DATED MAY 2, 1941, RECORDED MAY 15, 1941 IN BOOK 1946 PAGE 309 OF OFFICIAL RECORDS, DOCUMENT NO. 17541;

ALSO EXCEPTING AND RESERVING UNTO FLOYD A. YEAROUT, AN UNDIVIDED 3/16THS INTEREST (18 3/4% OUT OF 100%) AND UNTO RAYMOND L. YEAROUT AN UNDIVIDED 1/16<sup>TH</sup> INTEREST (6 1/4% OUT OF 100%) IN AND TO ALL OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS LOCATED IN, ON OR UNDER THE REAL PROPERTY ABOVE DESCRIBED, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS TO SAID PROPERTY FOR THE PURPOSE OF EXTRACTING OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS FROM SAID PROPERTY, AND TOGETHER WITH ALL OTHER RIGHTS NECESSARY FOR SAID PURPOSES, AS RESERVED IN THE DEED FROM FLOYD A. YEAROUT, ALSO KNOWN AS F. A. YEAROUT AND ANNA V. YEAROUT, HIS WIFE, RAYMOND L. YEAROUT AND WILDA YEAROUT, HIS WIFE, TO SUMNER PECK RANCH, INC., A CORPORATION, DATED FEBRUARY 10, 1952, RECORDED FEBRUARY 18, 1952 IN BOOK 3124 PAGE 527 OF OFFICIAL RECORDS, DOCUMENT NO. 8803.

**GROUP S**

APN: 028-111-43-S

THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM AN UNDIVIDED 50% INTEREST IN AND TO ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER, TOGETHER WITH ALL EASEMENTS AND RIGHTS NECESSARY OR CONVENIENT FOR THE PRODUCTION, STORAGE AND TRANSPORTATION THEREOF AND THE EXPLORATION AND TESTING OF THE SAID REAL PROPERTY, AND ALSO THE RIGHT TO DRILL FOR, PRODUCE AND USE WATER FROM THE SAID REAL PROPERTY IN CONNECTION WITH DRILLING OR MINING OPERATIONS THEREON, AS RESERVED BY HELEN C. WOOD AND AURELIA REID CUNNING IN A DEED RECORDED NOVEMBER 9, 1967 AS INSTRUMENT NO. 77806 IN BOOK 5499, PAGE 441 OF OFFICIAL RECORDS.

**GROUP T**

APN: 038-080-38S

PARCEL 3:

THE FRACTIONAL SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 16 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF; EXCEPTING THEREFROM

ALL OIL, GAS AND MINERALS IN AND UNDER SAID PROPERTY, AS GRANTED BY F. A. YEAROUT AND ANNA V. YEAROUT, HUSBAND AND WIFE, TO EUGENE ARTHUR JACQUEMART, AS TO AN UNDIVIDED ONE-THIRD INTEREST; JULIE FELICIE SKAGGS, AS TO AN UNDIVIDED ONE-THIRD INTEREST; AND JULIE FELICIE SKAGGS AND C. W. SKAGGS, HER HUSBAND, AS TO AN UNDIVIDED ONE-THIRD INTEREST, IN THE DEED DATED SEPTEMBER 6, 1940, RECORDED SEPTEMBER 17, 1940 IN BOOK 1861 PAGE 261 OF OFFICIAL RECORDS, DOCUMENT NO. 28483.

**GROUP U**

APN: 038-080-05S

PARCEL 4:

THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 16 SOUTH, RANGE 15 EAST, ACCORDING TO THE OFFICIAL PLAT THEREOF;

EXCEPTING AND RESERVING UNTO GRANTORS, MARGARET N. ANTON, GRACE HELEN SINGLETON AND HAZEL C. MUSGROVE, IN DEED TO SUMNER PECK RANCH, A CORPORATION, DATED JUNE 4, 1963 AND RECORDED JULY 24, 1963 IN BOOK 4887 PAGE 262 OF OFFICIAL RECORDS, DOCUMENT NO. 58677, AN UNDIVIDED ONE-HALF INTEREST IN AND TO ALL OIL, GAS AND MINERALS.

**Exhibit B**  
**to First Amendment to Memorandum of Purchase and Sale Agreement**  
**and Escrow Instructions**

Description of Terminated Parcels

APN: 028-101-70-S (PORTION)

PARCEL 3:

LOT 7 IN SECTION 26, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE MAP OF PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, RECORDED NOVEMBER 17, 1911 IN BOOK 7, PAGE 7 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND MINERAL RIGHTS OF WHATSOEVER NATURE AND DESCRIPTION IN AND UNDER SAID PROPERTY, WITH THE RIGHT TO PROSPECT FOR AND EXPLOIT THE SAME, AND TO MAKE SUFFICIENT USE OF THE SURFACE OF THE REAL PROPERTY AND ALL EASEMENTS AND RIGHTS OF WAY APPURTENANT THERETO, FOR SAID PURPOSES, AND FOR INGRESS AND EGRESS THERETO AND THEREFROM, AND THE RIGHT TO LAY, MAINTAIN, AND OPERATE PIPELINES OVER AND ACROSS THE REAL PROPERTY FOR THE TRANSPORTATION OF OIL AND GAS, PROVIDED THAT SHOULD GRANTOR, ITS SUCCESSORS, ASSIGNS OR LESSEES IN ANY WAY DAMAGE ANY GROWING CROPS OR OTHER IMPROVEMENTS ON THE REAL PROPERTY IN EXPLOITING OR DEVELOPING THE REAL PROPERTY OR ANY PART THEREOF FOR OIL, GAS, OR OTHER MINERALS, THEN THE GRANTOR SHALL PAY SUCH DAMAGES TO THE GRANTEE OR ITS SUCCESSORS AT THE TIME SUCH DAMAGE IS COMMITTED, EXCEPT INsofar AS SUCH DAMAGES ARE UNDERTAKEN AND AGREED TO BE PAID BY ANY LESSEE OF THE GRANTOR OR ITS SUCCESSORS OR ASSIGNS, AS RESERVED IN THE DEED FROM KRIESANT OPERATING COMPANY, INCORPORATED, RECORDED APRIL 4, 1988 AS INSTRUMENT NO. 88035714, OFFICIAL RECORDS.

APN: 028-101-70-S (PORTION)

PARCEL 4:

LOT 4 IN SECTION 26, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE MAP OF PART OF

CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, RECORDED NOVEMBER 17, 1911 IN BOOK 7, PAGE 7 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

EXCEPT ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND MINERALS LOCATED IN, UNDER AND UPON SAID PROPERTY, TOGETHER WITH THE RIGHT TO GO UPON SAID PROPERTY AT ANY TIME HEREAFTER FOR THE PURPOSE OF DEVELOPING AND EXTRACTING OIL, GAS, MINERALS AND OTHER HYDROCARBON SUBSTANCES FROM SAID LAND, AND TO ERECT AND CONSTRUCT UPON SAID LAND ANY AND ALL EQUIPMENT, DERRICKS, TELEPHONE AND TELEGRAPH LINES, STORAGE TANKS, AND ANY AND ALL THINGS NECESSARY OR INCIDENTAL TO THE EXPLORATION AND DEVELOPMENT OF SAID LAND FOR OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS, TOGETHER WITH THE RIGHTS OF WAY FOR PASSAGE OVER, UPON AND ACROSS, AND EGRESS AND INGRESS TO AND FROM SAID LAND FOR ANY AND ALL OF THE ABOVE PURPOSES, AS RESERVED IN THE DEED DATED NOVEMBER 20, 1962 FROM ESTHER W. BOORMAN TO KRIESANT OPERATING COMPANY, INCORPORATED, RECORDED DECEMBER 12, 1962 AS INSTRUMENT NO. 95987, OFFICIAL RECORDS.

APN: 028-101-70-S (PORTION)

PARCEL 5:

LOT 8 IN SECTION 26, TOWNSHIP 15 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE MAP OF PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, RECORDED NOVEMBER 17, 1911 IN BOOK 7, PAGE 7 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

EXCEPT THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN AND TO ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATE THEREIN AND THEREUNDER AS RESERVED IN THE DEED FROM DORA E. CARLSON, DORIS L. WILD AND DORIS L. WILD, AS TRUSTEE UNDER THE LAST WILL AND TESTAMENT OF M. K. WILD, DECEASED, TO KRIESANT OPERATING COMPANY, INCORPORATED, DATED JUNE 13, 1962, RECORDED JUNE 21, 1962 AS INSTRUMENT NO. 48898 IN BOOK 4732, PAGE 817, OFFICIAL RECORDS.

ALSO EXCEPT THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND

MINERAL RIGHTS OF WHATSOEVER NATURE AND DESCRIPTION IN AND UNDER SAID PROPERTY, WITH THE RIGHT TO PROSPECT FOR AND EXPLOIT THE SAME, AND TO MAKE SUFFICIENT USE OF THE SURFACE OF THE REAL PROPERTY AND ALL EASEMENTS AND RIGHTS OF WAY APPURTENANT THERETO, FOR SAID PURPOSES, AND FOR INGRESS AND EGRESS THERETO AND THEREFROM, AND THE RIGHT TO LAY, MAINTAIN, AND OPERATE PIPELINES OVER AND ACROSS THE REAL PROPERTY FOR THE TRANSPORTATION OF OIL AND GAS, PROVIDED THAT SHOULD GRANTOR, ITS SUCCESSORS, ASSIGNS OR LESSEES IN ANY WAY DAMAGE ANY GROWING CROPS OR OTHER IMPROVEMENTS ON THE REAL PROPERTY IN EXPLOITING OR DEVELOPING THE REAL PROPERTY OR ANY PART THEREOF FOR OIL, GAS, OR OTHER MINERALS, THEN THE GRANTOR SHALL PAY SUCH DAMAGES TO THE GRANTEE OR ITS SUCCESSORS AT THE TIME SUCH DAMAGE IS COMMITTED, EXCEPT INsofar AS SUCH DAMAGES ARE UNDERTAKEN AND AGREED TO BE PAID BY ANY LESSEE OF THE GRANTOR OR ITS SUCCESSORS OR ASSIGNS, AS RESERVED IN THE DEED FROM KRIESANT OPERATING COMPANY, INCORPORATED, RECORDED APRIL 4, 1988 AS INSTRUMENT NO. 88035714, OFFICIAL RECORDS.

APN: 028-111-07

PARCEL 1:

THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM 50% OF ALL OIL, GAS AND MINERALS, AS RESERVED IN THE DEED FROM HOWARD A. BROWN, AS TRUSTEE FOR MATTIE L. BROWN TO JAMES J. IMPERATRICE AND EVELYN IMPERATRICE, HUSBAND AND WIFE, RECORDED FEBRUARY 26, 1957 IN BOOK 3889, PAGE 368 OF OFFICIAL RECORDS, DOCUMENT NO. 14291.

ALSO EXCEPTING THEREFROM ONE-HALF OF ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATE THEREIN AND THEREUNDER, AS RESERVED IN THE DEED DATED APRIL 29, 1959, FROM J. J. IMPERATRICE, ALSO KNOWN AS JAMES J. IMPERATRICE AND EVELYN IMPERATRICE, HUSBAND AND WIFE TO FRANCIS ORFF AND ANGIE ORFF, HUSBAND AND WIFE, AS JOINT TENANTS, RECORDED JULY 21, 1959 IN BOOK 4250, PAGE 484 OF OFFICIAL RECORDS, DOCUMENT NO. 50988.



APN: 028-111-38

PARCEL 1A:

A NON-EXCLUSIVE RIGHT OF WAY FOR AN IRRIGATION DITCH AND FOR INGRESS AND EGRESS OVER, ALONG AND ACROSS THE FOLLOWING DESCRIBED PARCEL OF LAND:

THE SOUTH 20 FEET OF SECTION 30, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, SAID RIGHT OF WAY BEING APPURTENANT TO THE SOUTHWEST QUARTER OF SAID SECTION 29 AND THE NORTHEAST QUARTER OF SECTION 31 ALL IN TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, AS GRANTED TO FRANCIS A. ORFF, ET UX, BY DEED DATED SEPTEMBER 28, 1967, RECORDED OCTOBER 02, 1967 IN BOOK 5486, PAGE 7 OF OFFICIAL RECORDS, DOCUMENT NO. 66324.

PARCEL 2:

THE NORTH HALF OF THE NORTH HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

APN: 038-080-23-S

PARCEL 1:

THE NORTHWEST QUARTER OF SECTION 8, TOWNSHIP 16 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM, COAL, OIL, NAPHTHA, ASPHALTUM AND OTHER HYDROCARBON AND MINERAL SUBSTANCES LOCATED IN, UNDER AND UPON SAID PREMISES, AS RESERVED IN THE DEED FROM WILLIAM SHIELLS COMPANY, A CORPORATION, TO F. A. YEAROUT, DATED APRIL 22, 1942, RECORDED APRIL 27, 1942, DOCUMENT NO. 16459.

APN: 038-080-16-S

PARCEL 2:

THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 16 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATE THEREIN AND THEREUNDER, TOGETHER WITH ALL EASEMENTS AND RIGHT NECESSARY OR CONVENIENT FOR THE PRODUCTION, STORAGE AND TRANSPORTATION THEREOF AND THE EXPLORATION AND TESTING OF THE SAID REAL PROPERTY AND ALSO THE RIGHT TO DRILL FOR, PRODUCE AND USE WATER FROM THE SAID REAL PROPERTY IN CONNECTION WITH DRILLING OR MINING OPERATIONS THEREON.

APN: 038-080-17-S

PARCEL 3:

THE SOUTH HALF OF THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 16 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING AND RESERVING UNTO THE GRANTORS, FLOYD A. YEAROUT AND ANNA V. YEAROUT, HUSBAND AND WIFE, AS JOINT TENANTS, AN UNDIVIDED THREE-EIGHTHS INTEREST (37-1/2% OF 100%), AND TO THE GRANTOR, RAYMOND L. YEAROUT AN UNDIVIDED ONE-EIGHTH INTEREST (12-1/2% OUT OF 100%) IN AND TO ALL OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS LOCATED IN, ON OR UNDER SAID PROPERTY, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS TO SAID PROPERTY FOR THE PURPOSE OF EXTRACTING OIL, GAS, PETROLEUM HYDROCARBON SUBSTANCES AND OTHER MINERALS FROM SAID PROPERTY AND TOGETHER WITH ALL OTHER RIGHTS NECESSARY FOR SAID PURPOSES.

APN: 038-080-21-S

PARCEL 4:

THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 16 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING 50% OF ALL MINERAL RIGHTS IN SAID, LAND, AS RESERVED IN THE DEED FROM CHARLES C. CREW AND PEARL G. CREW, HIS WIFE, TO F. A. YEAROUT AND ANNA V. YEAROUT, HIS WIFE, AS JOINT TENANTS, DATED OCTOBER 4, 1940, RECORDED OCTOBER 14, 1940 IN BOOK 1896 PAGE 260 OF OFFICIAL RECORDS, DOCUMENT NO. 30940;

ALSO EXCEPTING AND RESERVING UNTO FLOYD A. YEAROUT AND ANNA V. YEAROUT, HUSBAND AND WIFE, AS JOINT TENANTS, AN UNDIVIDED 3/16THS INTEREST (18 3/4% OUT OF 100%) AND UNTO RAYMOND L. YEAROUT, AN UNDIVIDED 1/16TH INTEREST (6 1/4% OUT OF 100%) IN AND TO ALL OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS LOCATED IN, ON OR UNDER SAID PROPERTY, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS TO SAID PROPERTY FOR THE PURPOSE OF EXTRACTING OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS FROM SAID PROPERTY, AND TOGETHER WITH ALL OTHER RIGHTS NECESSARY FOR SAID PURPOSES, AS RESERVED IN THE DEED FROM FLOYD A. YEAROUT, ALSO KNOWN AS F. A. YEAROUT AND ANNA V. YEAROUT, HIS WIFE, RAYMOND L. YEAROUT AND WILDA YEAROUT, HIS WIFE, TO SUMNER PECK RANCH, INC., A CORPORATION, DATED FEBRUARY 10, 1952, RECORDED FEBRUARY 18, 1952 IN BOOK 3124 PAGE 527 OF OFFICIAL RECORDS, DOCUMENT NO. 8803.

APN: 038-080-22-S

PARCEL 5:

THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 8, TOWNSHIP 16 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING 50% OF ALL THE MINERAL RIGHTS IN SAID LAND, AS RESERVED IN THE DEED FROM WILSON F. BUNDY, SOMETIMES KNOWN AS W.F. BUNDY AND NELLIE B. BUNDY, HIS WIFE, TO F. A. YEAROUT AND ANNA V. YEAROUT, HIS WIFE, AS JOINT TENANTS, DATED OCTOBER 4, 1940 AND RECORDED OCTOBER 14, 1940 IN BOOK 1940 PAGE 87 OF OFFICIAL RECORDS, DOCUMENT NO. 30942;

ALSO EXCEPTING AND RESERVING UNTO FLOYD A. YEAROUT AND ANNA V. YEAROUT, HUSBAND AND WIFE, AS JOINT TENANTS, AN UNDIVIDED 3/16THS INTEREST (18 3/4% OUT OF 100%) AND UNTO RAYMOND L. YEAROUT, AN UNDIVIDED 1/16TH INTEREST (6 1/4% OUT OF 100%) IN AND TO ALL OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS FROM SAID PROPERTY, AND TOGETHER WITH ALL OTHER RIGHTS NECESSARY FOR SAID PURPOSES, AS RESERVED IN THE DEED

FROM FLOYD A. YEAROUT, ALSO KNOWN AS F. A. YEAROUT AND ANNA V. YEAROUT, HIS WIFE, RAYMOND L. YEAROUT AND WILDA YEAROUT, HIS WIFE, TO SUMNER PECK RANCH, INC., A CORPORATION, DATED FEBRUARY 10, 1952, RECORDED FEBRUARY 18, 1952 IN BOOK 3124 PAGE 527 OF OFFICIAL RECORDS, DOCUMENT NO. 8803.

## EXHIBIT C

### DEPICTION OF RETAINED PORTION OF APN 028-101-70ST



## EXHIBIT D

### TERMINATED PARCELS

APN	Acres
028-101-70ST lying north of Dinuba Avenue	56
028-111-07ST	160
028-111-38T	10
038-080-23ST	160
038-080-16ST	80
038-080-17ST	80
038-080-21ST	79
038-080-22ST	79



## Westlands Water District

3130 N. Fresno Street, P.O. Box 6056, Fresno, California 93703-6056, (559) 224-1523, FAX (559) 241-6277

July 12, 2013

RE Tranquillity LLC  
300 California St. 7<sup>th</sup> Floor  
San Francisco, CA 94104

To Whom It May Concern:

We hereby grant authority to RE Tranquillity LLC (the "Applicant") and its representatives, to file a Conditional Use Permit Application and other related applications as may be required to Fresno County for the development, permitting, entitlement, and construction of a proposed solar project located on our property southwest of Tranquillity, CA in unincorporated Fresno County on the following APNs:

028-101-45ST; 028-101-46ST; 028-101-47ST; 028-101-48ST; 028-101-50ST; 028-101-51T; 028-101-53T; 028-101-70ST; 028-101-23ST; 028-101-22T; 038-320-17T; 038-320-18ST; 038-320-23ST; 038-320-01ST; 038-320-06ST; 038-320-24ST; 038-320-25ST; 038-320-27ST; 038-320-28ST; 038-320-16T; 038-320-30ST; 038-320-29ST; 038-320-02T; 038-320-37ST; 038-320-38ST; 028-111-60ST; 028-111-50ST; 028-111-52ST; 028-111-53ST; 028-111-47ST; 028-111-46T; 028-111-45T; 028-111-44ST; 038-080-35ST; 038-080-03S; 028-111-43ST; 038-080-38ST; 038-080-05ST

The Applicant shall be responsible for all fees associated with these applications. All correspondence, requests for inspections, notifications, and contact for this Application should be directed to:

Office of the General Counsel & Vice President of Site Acquisitions and Permitting  
Recurrent Energy  
300 California Street, 7<sup>th</sup> Floor  
San Francisco, CA 94104  
(415) 501-9419  
[Legal@recurrentenergy.com](mailto:Legal@recurrentenergy.com); [Seth.Israel@recurrentenergy.com](mailto:Seth.Israel@recurrentenergy.com)

Sincerely,

Dave Ciapponi  
Secretary

## AMENDED AND RESTATED OPTION AGREEMENT

This Amended and Restated Option Agreement (this "Amended Option Agreement") is dated as of August 24, 2010, for reference purposes only, and is made by and between WESTLANDS WATER DISTRICT, a California water district, ("Seller"), and NORTH STAR SOLAR LLC, a Delaware limited liability company ("Buyer") (collectively referred to as the "Parties"). This Amended Option Agreement amends, restates, supersedes and replaces in full the February Option Agreement (defined below) executed by and between Seller and Buyer.

### RECITALS

A. WHEREAS, Buyer and Seller executed and delivered that certain Option Agreement dated as of February 18, 2010 (the "February Option Agreement"), with respect to certain land consisting of approximately 634.13 acres, located in the County of Fresno, State of California and designated as assessor parcel numbers 019-040-30, 019-040-05 and 019-050-61, which land is more particularly described in the February Option Agreement (the "Original Option Property"); and

B. WHEREAS, Buyer and Seller wish to execute and deliver this Amended Option Agreement to substitute and replace the Original Option Property with the Property described herein.

NOW THEREFORE, in consideration of the mutual agreements contained in this Amended Option Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to amend and restate the February Option Agreement in its entirety, and the February Option Agreement is hereby amended and restated, as follows:

### ARTICLE 1

#### DEFINITIONS

For purposes of this Amended Option Agreement, the following terms shall have the following meanings:

1.1 Property: The term "Property" shall mean the following:

A. that certain land consisting of approximately 626.82 acres, located in County of Fresno, assessor parcel numbers 019-050-55ST and 019-050-56ST, as more particularly described in attached Exhibit A (the "Land");

B. all of Seller's right, title and interest, if any, in and to all improvements and fixtures located on the Land, including, without limitation, all landscaping, utilities equipment and infrastructure, drainage improvements, dikes, berms and dams, but excluding (i) any such items owned by public or private utilities other than Seller, and (ii) items owned by Seller in the nature of public utility facilities (collectively, the "Improvements");

C. all rights, privileges and easements appurtenant to the Land, including, without limitation, all development rights, air rights, and sun rights relating to the Land and any rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land and Improvements and all of Seller's right, title and interest, if any, in and to all roads and alleys adjoining or servicing the Land (collectively, the "Appurtenances"; the Land, Improvements and Appurtenances are referred to herein collectively as the "Real Property"); and



D. all of Seller's right, title and interest, if any, in and to any intangible personal property now or hereafter owned by Seller and used in the ownership, use or operation of the Real Property, including, without limitation, all utility contracts or other agreements or rights relating to the ownership, use and operation of the Real Property, all reports, warranties, indemnities, permits, plans, insurance proceeds and condemnation awards and all other rights, benefits or approvals issued or available to Seller by any federal, state or local municipal authorities relating to the development, use, maintenance, ownership or operation of the Real Property (collectively, the "Intangible Property").

1.2 Rights Excluded: Notwithstanding anything to the contrary in this Amended Option Agreement, the parties agree that the Property shall not include and Seller shall retain all rights to (i) all water deliveries and allocation from Seller appurtenant to the Land by virtue of its location within Seller's service area, except as otherwise provided in this Amended Option Agreement and (ii) all minerals, oil, gas and other hydrocarbon substances on and under the Land, to the extent owned by Seller; provided, however, that Seller shall have no rights to use or access the surface of the Land to remove, exploit or otherwise benefit from such minerals, oil, gas and other hydrocarbon substances after Buyer acquires the Property.

1.3 Effective Date of this Option: This Amended Option Agreement shall be effective on, and the term "Effective Date" shall mean, the date the last designated signatory to this Amended Option Agreement shall have executed this Amended Option Agreement.

## ARTICLE 2

### OPTION TERMS

2.1 Grant of Option: Seller hereby grants to Buyer an option to purchase (the "Option") the Property. This Option is on the terms and conditions set forth in this Amended Option Agreement. The purchase and sale of the Property on exercise of this Option shall be on substantially the terms and conditions set forth in the Purchase and Sale Agreement attached as Exhibit C to this Amended Option Agreement (the "Purchase Agreement").

#### 2.2 Term of Option:

A. Basic Term: The Parties acknowledge that the initial term of the February Option Agreement commenced on the Effective Date of the February Option Agreement and was extended through 5:00pm (California time) on September 30, 2010 pursuant to Buyer's exercise of its first extension option under the February Option Agreement. Accordingly, the initial term of this Amended Option Agreement shall commence on the Effective Date of this Amended Option Agreement and shall terminate at 5:00 p.m. (California time) on September 30, 2010 (the "Initial Option Period," and, as extended pursuant to this Amended Option Agreement, the "Option Term"), unless sooner terminated as provided herein. As long as this Amended Option Agreement remains in effect, Buyer may extend the term of the Option for the periods described in Section 2.5 below by timely payment of the amounts described in that section.

B. Automatic Termination: This Amended Option Agreement shall automatically and immediately terminate without notice, and the parties shall thereafter have no further rights, claims or obligations hereunder, (i) if Buyer fails to timely extend the Option Term as provided in Section 2.5 or timely exercise this Option in accordance with the provisions of Section 2.6 or (ii) if, prior to any exercise of the Option to purchase, Buyer notifies Seller of Buyer's election to terminate this Amended Option Agreement.

2.3 Consideration: The Parties acknowledge that, pursuant to the February Option Agreement, Buyer deposited into escrow with Chicago Title Company at 455 Market Street, Suite 2100, San Francisco, California 94105 (the "Title Company"), the sum of Thirty Thousand Dollars (\$30,000) (the "Initial

Deposit") and, in connection with the Buyer's exercise of its first extension option, an additional sum of Thirty Thousand Dollars (\$30,000.00) (the "First Extension Deposit"). The Parties further acknowledge that the Initial Deposit was previously disbursed by the Title Company to Seller pursuant to the terms of the February Option Agreement. The Title Company shall invest the Deposits in an interest-bearing account acceptable to Buyer and interest accruing thereon shall be held for the account of Buyer; provided, however, that, so long as Seller is not in default under this Amended Option Agreement and subject to Section 3.2 and Section 3.6 hereof, (i) the First Extension Deposit shall be disbursed by the Title Company to Seller upon expiration of the Initial Term of this Amended Option Agreement and (ii) each Extension Deposit shall be disbursed to by the Title Company to Seller upon expiration of the Extension Period to which it pertains. The term "Deposits" shall refer to the Initial Deposit, the First Extension Deposit and all interest thereon, and, to the extent delivered by Buyer pursuant to Section 2.5 hereof, any Extension Deposit, and all interest thereon. Notwithstanding the foregoing, the Extension Deposit for the period January 1, 2012 – December 31, 2012 shall disbursed by Title Company to Seller immediately following Buyer's delivery of that Extension Deposit to Escrow.

#### 2.4 Application of Option Consideration:

A. If this Option is exercised in accordance with its terms by Buyer and the Closing (as defined in the Purchase Agreement) occurs in accordance with the Purchase Agreement, the Initial Deposit plus interest accrued thereon, together with all Extension Deposits actually delivered by Buyer, plus all interest accrued thereon prior to the distribution of the Deposits to Seller, shall be credited against the Purchase Price.

B. If this Amended Option Agreement terminates for any reason other than Seller's material default, Seller shall retain, and Buyer shall not have any claim whatsoever to, all Deposits previously paid by Buyer to Seller with respect to this Amended Option Agreement; provided, however, that Buyer shall have the right to receive a return of the Deposits upon any termination of this Amended Option Agreement pursuant to Section 3.2 or Section 3.6 below.

2.5 Extension of Option Term. Buyer shall have the right to extend the Option Term six (6) separate times for the following periods (the "Extension Period(s)"):

Extension Option	Extension Period
1	October 1, 2010 – December 31, 2010
2	January 1, 2011 – March 31, 2011
3	April 1, 2011 – June 30, 2011
4	July 1, 2011 – September 30, 2011
5	October 1, 2011 -- December 31, 2011
6	January 1, 2012 – December 31, 2012

Buyer may exercise each such extension option prior to the commencement of the Extension Period to which such extension option pertains by: (a) giving written notice of such extension to Seller and the Title Company (which notice shall specify the date to which the Option Term has been extended), and (b) depositing with the Title Company (i) the sum of Thirty Thousand Dollars (\$30,000.00) for each of the first

five (5) extensions so exercised and (ii) the sum of One Million Dollars (\$1,000,000) for the sixth (6<sup>th</sup>) extension, if exercised (collectively, together with all interest thereon, and together with the First Extension Deposit and all interest thereon, the "Extension Deposit(s)"). The Extension Deposits, to the extent actually paid, shall be credited against the Purchase Price.

2.6 Exercise of Option: At any time prior to expiration of the Option Term, Buyer may exercise the Option by delivery to Seller of a written notice (delivered in accordance with the provisions of Section 5.1) of Buyer's election to exercise its Option (the "Exercise Notice"). Buyer must exercise the Option as to all of the Property or not at all. No partial exercise of the Option is permitted. Within three (3) business days after exercise of the Option, the parties shall execute and deliver into escrow with the Title Company the Purchase Agreement.

### ARTICLE 3

#### OBLIGATIONS OF THE PARTIES DURING THE OPTION TERM

##### 3.1 Buyer's Right to Enter: Due Diligence:

A. Buyer and its agents, employees, representatives and contractors shall be permitted to perform due diligence with respect to the Property during the Option Term. Buyer and its agents shall have the right, upon reasonable notice to Seller, at any reasonable time, to go upon the Property to inspect, examine, survey and make test borings, soil bearing tests and any other engineering, environmental, architectural or landscaping tests, drawings, investigations or surveys that Buyer deems necessary or appropriate. Any environmental testing to be performed by or for Buyer must be conducted by consultants and/or contractors who are licensed (if applicable) in the State of California. At Buyer's election, Buyer, at Buyer's sole cost, may obtain an ALTA survey for the Property, and shall request the Title Company to issue a Supplement (as defined below) in connection therewith. Seller, or his agent, shall have the right to observe any testing by or for Buyer, Buyer shall promptly restore the Property to the condition that it was in prior to any such activities conducted by Buyer.

B. If there is any damage to the Property as a result of the foregoing, then, Buyer, at its sole cost and expense, shall promptly remedy such damage to the satisfaction of Seller. Buyer agrees to indemnify, protect, defend and hold harmless Seller from and against all losses, liabilities, damages, costs, claims, actions, causes of action, expenses (including reasonable attorneys' fees) and liens to the extent caused in whole or part, by any of the foregoing activities conducted by or for Buyer; except with respect to any loss, cost, damage, claim or liability incurred by Seller resulting from the existence of, or the mere discovery by Buyer or its representatives of, defects or other adverse conditions at the Property and except for the negligence or willful misconduct of Seller or its agents, employees or contractors. Buyer's indemnity obligations shall survive the Closing or other termination of this Amended Option Agreement. In connection with its due diligence activities on the Property, Buyer shall carry insurance coverage policies of general liability insurance, providing limits of not less than \$1,000,000 bodily injury and property damage per occurrence and \$2,000,000 general aggregate. Said policies shall name Seller as additional insured (with ISO CG 2010 endorsement or equivalent) and shall provide that policy will not be cancelled in coverage without thirty (30) days' written notice to Seller. Prior to execution of this Amended Option Agreement by Seller, Buyer shall cause to be delivered to Seller a copy of the certificate of insurance reflecting all essential coverage.

C. Seller agrees to deliver to Buyer all of the Due Diligence Materials (defined below) within fifteen (15) business days after Buyer's written request. Buyer shall have the right to make such investigations, studies and tests with respect to the Property as Buyer deems necessary or appropriate to

determine the feasibility of purchasing and developing the Property, including, without limitation, review and approval of the following matters: environmental reports, soils reports, insurance policies, all governmental permits and approvals relating to the Property, and other contracts or documents of significance to the Property and such other information relating to the Property that are reasonably requested by Buyer of Seller to the extent such information either is in the possession or control of Seller ("Due Diligence Materials"). If Buyer fails to purchase the Property for any reason Buyer shall return to Seller (i) all Due Diligence Materials received from Seller and any copies thereof and (ii) copies of any reports or other written materials prepared by third-parties relating to the physical or environmental condition of the Land; provided, however, that (i) Buyer shall have no obligation to provide to Seller (a) any proprietary information relating to Buyer's potential development of the Property for solar power generation, (b) any internally or externally prepared reports regarding valuation or economic performance of the Property, (c) any income tax returns or (d) any information or documentation that is privileged, subject to a confidentiality restriction or otherwise legally protected from disclosure and (ii) Buyer shall have no liability to Seller with respect to Seller's use of such reports and Seller shall indemnify, defend and hold Buyer harmless from any all losses, damages, liabilities, claims, attorneys' fees, costs and expenses arising from any claims against Buyer as a result of Seller's use of such reports.

D. Except for disclosure to Buyer's attorneys, accountants, members, partners, employees, contractors and consultants, Buyer shall not disclose any adverse conditions affecting the Property unless and until Buyer purchases the Property, unless such disclosure is required by law or in connection with Buyer's due diligence investigation or development of the Property.

### 3.2 Condition of Title.

A. Within five (5) business days following execution of this Amended Option Agreement, Seller shall direct Title Company to deliver to Buyer (i) a current preliminary title report on the Land, issued by the Title Company, accompanied by copies of all documents referred to in the report (collectively, the "Preliminary Report"), (ii) a copy of the most recent tax bill for the Land, including information regarding any assessments affecting the Land in Seller's possession, (iii) copies of all existing and proposed easements, covenants, restrictions, agreements or other documents which affect title to the Property and which are not disclosed by the Preliminary Report; and (iv) any survey of the Land in Seller's possession or control. Buyer shall deliver to Seller and the Title Company written notice ("Buyer's Title Notice"), within thirty (30) days after receipt of the Preliminary Report and related materials listed above, identifying what exceptions to title, if any, are objectionable to Buyer. Notwithstanding the foregoing, except as provided in Section 3.2(B) and Section 3.2(C), Seller shall have no obligation to remove any objectionable exception, including without limitation (i) any objectionable exception pertaining to the use of irrigation water on the Property or the agricultural use of the Property, including, but not limited to, prohibitions or restrictions imposed for the benefit of Seller or the United States, or (ii) exceptions (if any) pertaining to any "Williamson Act" contract; provided, however, that Buyer shall be permitted to identify such matters as objectionable exceptions in Buyer's Title Notice.

B. Seller shall have five (5) business days after receipt of Buyer's objections to give Buyer: (i) evidence satisfactory to Buyer of the removal of all objectionable exceptions from title or that all or certain of said exceptions will be removed on or before the Closing Date; or (ii) notice that Seller elects not to cause all or certain of such exceptions to be removed. If Seller gives Buyer notice under clause (ii), Buyer shall have five (5) days to elect to proceed with the purchase or terminate this Amended Option Agreement. If Buyer elects to terminate within such five (5) day period, then this Amended Option Agreement shall terminate, in which event Buyer shall pay any title and escrow fees, the Title Company or Seller, as applicable, shall immediately return the Initial Deposit and any Extension Deposits actually received, and neither party shall have any further rights or obligations hereunder.

C. A similar procedure to the foregoing shall be followed with respect to any supplement issued to the Preliminary Report (each, a "Supplement"); provided, however, that Buyer shall have ten (10) business days after receipt of any Supplement issued to deliver Buyer's Title Notice to Seller and Title Company, and if additional exceptions appear on any Supplement that result from the acts of Seller, Seller shall be obligated to remove such additional exceptions if Buyer timely objects to them.

3.3 Covenants and Warranties of Seller Concerning the Property: Seller covenants, warrants and represents to Buyer that all of the representations and warranties set forth in Article 8 of the Purchase Agreement are true and correct, or will be correct as of the Closing Date. Seller agrees to operate and maintain the Property in accordance with the provisions of Sections 13 and 14 of the Purchase Agreement, which provisions are hereby incorporated by reference into this Amended Option Agreement.

3.4 [omitted]

3.5 Development of the Property: Seller agrees to reasonably cooperate with Buyer's proposed development of the Property as set forth in Section 16 of the Purchase Agreement, which is hereby incorporated by reference into this Amended Option Agreement.

3.6 Risk of Loss. In the event (A) any material loss or damage occurs to the Property during the Option Term but before exercise of the Option the cost of repair of which would exceed One Hundred Thousand Dollars (\$100,000) or (B) any condemnation proceedings are commenced against all or any portion of the Property during the Option Term but before exercise of the Option, then, notwithstanding anything to the contrary in this Amended Option Agreement, Buyer shall have the right to terminate this Amended Option Agreement, in which event Buyer shall pay any reasonable title and escrow fees, the Title Company or Seller, as applicable, shall return the Deposits (to the extent actually paid) to Buyer, Buyer shall return to Seller all Due Diligence Materials received from Seller and any copies thereof and neither party shall have any further rights or obligations hereunder.

#### ARTICLE 4

##### TERMS OF PURCHASE

4.1 Effect of Exercise: In the event that Buyer exercises the Option, then Buyer shall purchase and Seller shall sell the Property to Buyer upon the terms and conditions set forth in the Purchase Agreement.

4.2 Purchase Price: The purchase price of the Property is Nine Million Four Hundred Two Thousand Three Hundred Dollars (\$9,402,300), subject to reduction by any credits due Buyer pursuant to the Purchase Agreement (the "Purchase Price").

#### ARTICLE 5

##### GENERAL PROVISIONS

5.1 Notices: Any notice, consent or approval required or permitted to be given under this Amended Option Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, (ii) one (1) day after being deposited with Federal Express or another reliable overnight courier service, or (iii) on the transmitted facsimile telecopy confirmed as received, and addressed as follows:

If to Seller: Westlands Water District  
3130 North Fresno Street

Fresno, CA 93703-6056  
Attn: Mr. Tom Glover  
Fax No.: 559-241-6277

With a copy to: Sawyers & Holland, LLP  
652 West Cromwell, Suite 101  
Fresno, CA 93711  
Attn: David E. Holland, Esq.  
Fax No.: (559) 438-1781

If to Buyer: North Star Solar LLC  
701B Winslow Way East  
Bainbridge Island, WA 98110  
Attn: Dana Zentz  
Fax No.: (206) 780.3571

With a copy to: Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304-1050  
Attn: James P. McCann, Esq.  
Fax No.: (650) 493-6811

or such other address as either party may from time to time specify in writing to the other.

5.2 Brokerage Commissions: Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee in connection with the sale contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes its claim shall be responsible for said commission or fee and all costs and expenses (including reasonable attorneys' fees) incurred by the other party in defending against the same. The provisions of this paragraph shall survive the expiration or termination of this Amended Option Agreement.

5.3 Marketing. Seller agrees not to negotiate with, market or show the Property or to any other prospective purchasers during the term of this Amended Option Agreement.

5.4 Assignment: This Amended Option Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns. This Agreement may not be assigned, except as provided in Section 17(C) of the Purchase Agreement.

5.5 Miscellaneous. Time is of the essence of this Amended Option Agreement. This Amended Option Agreement shall be governed by and construed in accordance with the laws of the State of California. If any provision of this Amended Option Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Amended Option Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect. This Amended Option Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof, including the February Option Agreement. In the event a dispute arises concerning the performance, meaning or interpretation of any provision of this Amended Option Agreement, the defaulting party or the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including,

without limitation, court costs and attorneys' fees. Each party hereto agrees to execute and deliver such other and further instruments and documents as may reasonably be requested by the other to carry out this Amended Option Agreement. Each party hereto covenants to use reasonable efforts to cause satisfaction of all conditions to its obligation under this Amended Option Agreement, and to exercise good faith in fulfilling its obligations under this Amended Option Agreement.

5.6 Memorandum of Amended Option Agreement and Termination of Memorandum of Amended Option Agreement:

A. Within three (3) business days after the Effective Date, Seller and Buyer shall execute in recordable form a Memorandum of Amended and Restated Option Agreement (the "Memorandum") in the form attached hereto as Exhibit B. Buyer may cause the Memorandum to be recorded in the Official Records of Fresno County, California without the need for further instruction from Seller.

B. Contemporaneously with the execution of this Amended Option Agreement, Buyer shall execute in recordable form and deliver to the Title Company the Quitclaim Deed covering the Property in the form attached hereto as Exhibit D. Buyer hereby irrevocably instructs the Title Company to deliver the Quitclaim Deed to Seller on termination of this Amended Option Agreement for any reason other than a material default by Seller and Buyer agrees that, upon such delivery, Seller shall have the right to cause the Title Company to record such Quitclaim Deed in the Official Records, without the need for further instruction from Buyer.

C. Effective as of the Effective Date, Buyer acknowledges that it has no further interest in the Original Option Property and Buyer hereby irrevocably authorizes the Title Company to record the Quitclaim Deed executed by Buyer with respect to the Original Option Property in the Official Records of Fresno County.

IN WITNESS WHEREOF, the parties have executed this Amended Option Agreement as of the date first set forth above.

**Buyer:**

NORTH STAR SOLAR LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name:

Title:

Date of signature: \_\_\_\_\_

**Seller:**

WESTLANDS WATER DISTRICT,  
a California water district

By: \_\_\_\_\_

Name:

Title:

Date of signature: \_\_\_\_\_

*[Handwritten Signature]*  
Name: DAVE CIAPPONI  
Title: ASST GEN MGR  
9.2.10



## ACKNOWLEDGMENT

State of California  
County of Fresno

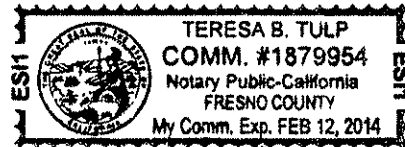
On September 2, 2010 before me, Teresa B. Tulp, Notary Public  
(insert name and title of the officer)

personally appeared Dave Ciapponi,  
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is~~are~~  
subscribed to the within instrument and acknowledged to me that he~~/she/they~~ executed the same in  
his~~/her/their~~ authorized capacity~~(ies)~~, and that by his~~/her/their~~ signature~~(s)~~ on the instrument the  
person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature Teresa B Tulp (Seal)



MINUTES OF THE ADJOURNED REGULAR MEETING OF THE BOARD OF  
DIRECTORS OF WESTLANDS WATER DISTRICT

November 25, 2014

An adjourned regular meeting of the Board of Directors of Westlands Water District was called to order by President Peracchi at the District's Fresno Office, 3130 N. Fresno Street, California at 1:30 p.m.

Directors present:

Don Peracchi, President  
Jim Anderson  
Frank Coelho  
Larry Enos  
Dan Errotabere  
Gary Esajian  
Todd Neves  
Alan Sano  
Sarah Woolf

Staff present:

Tom Birmingham, General Manager  
Craig Manson, General Counsel (by telephone)  
Dan Pope, Chief Operating Officer  
Dave Ciapponi, Secretary  
Bobbie Ormonde, Director of Finance & Administration  
Jose Gutierrez, Deputy General Manager - Resources  
Russ Freeman, Supervisor of Resources  
Karen Vierra, Supervisor of General Accounting  
Steve Farmer, Supervisor of Customer Accounting  
Charlotte Gallock, Junior Engineer  
Gayle Holman, Public Affairs Representative  
Karen Clark, Executive Assistant

APPROVAL OF MINUTES

There being no additions or corrections, the minutes of the Board's Adjourned Regular Meeting of October 30, 2014 stood approved as circulated.

GENERAL MANAGER'S REPORT

Mr. Gutierrez reported on the following with respect to water use and supply for the water year, through November, 2014:

1. Total supply was 464,508 acre-feet (AF).
2. Total use was 374,379 AF.
3. Total remaining supply was 90,129 AF.

Groundwater Pumping

Mr. Gutierrez reported that pumping in the Groundwater Management Program was estimated at 193,000 AF through the end of November; approximately 2.2 times the historical average. Total non-Program pumping was estimated at 364,000 AF for this

same period. For the 2014-15 contract year, water users had pumped about 10% more than last year. District staff was forecasting that 675,000 to 700,000 AF of groundwater would be pumped District-wide.

#### Storage

Mr. Gutierrez reported that San Luis Reservoir federal storage was 185,000 AF, which was 38% of historical average for this date, and about 97,000 AF less than 2014 levels. This storage had decreased 12,000 AF since last month's report. Shasta Reservoir storage was at 1.05 MAF, which was 45% of historical average, and 650,000 AF less than 2014 levels.

#### Pumping

Mr. Gutierrez reported that increased Delta salinity caused by continued low Delta inflows forced operators to cycle Jones Pumping Plant on/off for most of October. However, conditions improved enough for Jones PP to sustain a single unit of operation since October 30. Jones PP averaged about 742 cfs in October, and had averaged about 806 cfs in November. Due to the current the Coordinated Operations Agreement debt of about 200,000 AF, Jones PP would likely remain at a single unit operation through the end of the year, and Banks Pumping Plant would operate at a higher rate to reduce the Coordinated Operations Agreement debt.

#### Supplemental Water

Mr. Gutierrez reported that Supplemental Water requested was 247,000 AF on 368,000 acres for the 2014-15 water year. Central Valley Operations reported that all north-of-Delta transfers were conveyed by November 15, but it had not provided a written confirmation on the export totals or final carriage water loss. The District made available almost 30,000 AF for allocation to water users in November, bringing the total Supplemental Water allocation to about 60,000 AF. When Central Valley Operations provides written confirmation on the total exports and the Department of Water Resources publishes the final carriage water loss (expected in December), staff will allocate the final 40,000 AF, which will bring the District's Supplemental Water total to 100,000 AF.

#### Canal Integration Program

Mr. Gutierrez reported that the Canal Integration Program pumped about 3,000 AF in November, for a year-to-date total of 21,700 gross AF, and the program was temporarily suspended due to very low water demands.

#### 2015 CVP Allocation Projection

Mr. Gutierrez reported that District staff had projected that, absent significant precipitation in November, December, and January, the initial allocation for 2015 would

be zero, and will likely remain zero under a Critically Dry and Dry Water Year Type. Contractors could receive an allocation for Below Normal hydrologic conditions, but this depends primarily on Delta pumping restrictions imposed under the Biological Opinion.

Legislation

Mr. Birmingham reported that over the past month his time was spent providing technical assistance to members of Congress who were trying to reach an agreement on legislation. It was hopeful that legislation would be enacted during the current Congress which would adjourn on December 11. However, Senator Feinstein recently stated it was her opinion that it was not possible to reach agreement for enactment of the legislation during the current Congress but hoped to reach resolution in the next Congress. Her staff was continuing to work with members of the House of Representatives to come to an agreement.

Western Governors' Drought Forum

Mr. Birmingham reported that he participated in the Western Governors' Drought Forum held on November 13-14. The forum was held in Governor Brown's office. The panel topic in which he had participated regarded policy approaches for dealing with the drought and, in particular, how federal and state policies can either help or hinder agricultural producers in adjusting to managing water supplies during periods of drought. Mr. Birmingham also stated that federal policy implementation as it relates to the Endangered Species Act, the Clean Water Act, and Central Valley Project Improvement Act had proceeded without regard to the affect they had on agriculture and the environmental.

ACWA

Mr. Birmingham stated that several staff members would be attending the ACWA Conference being held December 2-5 in San Diego. Directors Errotabere and Esajian would be attending as well.

OUTSIDE AGENCY ACTIVITIES

- FFA            No report was given.
- SLDMWA    No report was given.
- SFWCA       Mr. Gutierrez reported on the activities of the Agency.

OPERATIONS & MAINTENANCE COMMITTEE

Director Coelho reported that the Operations & Maintenance Committee recently met to discuss the mid-year budget and project status. He noted that the O&M Division would come in at or below budget for the year, but that maintenance was being deferred on several items and would be discussed in the upcoming budget process for next year.

## WATER POLICY COMMITTEE

### Authorizing Execution of Purchase and Sale Agreement of District Owned Land

Mr. Gutierrez reported that the Board previously approved the sale of 1,899 acres of District owned land. The escrow company requires documentation that the Board has authorized the Secretary to execute the sales agreement, deed, and all necessary documents to effectuate the sale.

A motion was duly made and seconded to authorize the Secretary to execute the Purchase and Sale Agreement, deed, and all necessary documents to effectuate the sale for the District owned parcels, namely APNs: 028-101-51T, 028-101-22ST, 028-101-23ST, 028-101-45ST, 028-101-46ST, 028-101-47ST, 028-101-48ST, 028-101-50ST, 028-101-53T, 028-101-70T, 038-320-17T, 038-320-18ST and 038-320-23ST.

After the vote, Mr. Ciapponi announced that the Board approved the action, with the vote as follows:

President Peracchi: Aye

Director Anderson: Aye

Director Coelho: Aye

Director Esajian: Aye

Director Enos: Aye

Director Errotabere: Aye

Director Neves: Aye

Director Sano: Aye

Director Woolf: Aye

### Resolution No. 112-14, Authorizing Execution of San Luis & Delta-Mendota Water Authority Yuba Transfer 2015-2025 Activity Agreement, Finding That California Environmental Quality Act Does Not Apply, and Authorizing Actions Related Thereto

Mr. Birmingham reported that since 2007, the District had participated in the purchase of water from Yuba County Water Agency under the Department of Water Resources Dry Year Purchase Agreement and through an activity agreement with the San Luis & Delta-Mendota Water Authority. The District recently determined to continue its participation in this program. Resolution No. 112-14 had been prepared in order to accomplish this, along with certain actions and findings related to the Authority's Yuba Transfer 2015-2025 Activity Agreement. Further, the District had on file all of the documents which the Authority's Board of Directors had acted upon related to this matter.

A motion was duly made and seconded to adopt Resolution No. 112-14, authorizing the General Manager or his designee to execute the Yuba Transfer 2015-2025 Activity Agreement with the San Luis & Delta-Mendota Water Authority for the purchase of

YCWA water under the amended DWR Dry Year Purchase Agreement, and related actions; and finding that this activity agreement is not a project subject to CEQA. After the vote, Mr. Ciapponi announced that the Board approved the action, with the vote as follows:

President Peracchi: Aye  
Director Anderson: Aye  
Director Coelho: Aye  
Director Esajian: Aye  
Director Enos: Aye  
Director Errotabere: Aye  
Director Neves: Aye  
Director Sano: Aye  
Director Woolf: Aye

#### FINANCE & ADMINISTRATION COMMITTEE

##### 2013-2014 Audited Financial Statements

Ms. Ormonde introduced Messrs. Fausto Hinojoso and David Dybas of Price, Paige and Company Accountancy Corporation. Mr. Hinojoso discussed the independent auditor's report, the responsibilities of both management and the auditors, highlighted certain information in the financial statements, and concluded with his firm's opinion that the financial statements presented fairly, in all material respects, the financial position of the District as of February 28, 2014, and related changes in position and cash flows thereof for the year then ended, in accordance with accounting principles generally accepted in the United States. Ms. Ormonde stated that the 2013-2014 Audited Financial Statements had been extensively reviewed by the Committee and recommended Board acceptance.

A motion was duly made and seconded to accept the audited financial statements. After the vote, Mr. Ciapponi announced that the Board approved the action, with the vote as follows:

President Peracchi: Aye  
Director Anderson: Aye  
Director Coelho: Aye  
Director Esajian: Absent  
Director Enos: Aye  
Director Errotabere: Aye  
Director Neves: Aye  
Director Sano: Aye  
Director Woolf: Aye

#### Policy for Board of Directors and Board Committee Meetings

Ms. Ormonde reported that on October 30, 2014, the Finance & Administration Committee reviewed, revised and recommended for approval by the Board of Directors a draft Policy for Board of Directors and Board Committee Meetings. The Policy addresses the Board and Board Committee meetings and workshops, including dates, times, and public presentations. The Policy includes provisions that allow public participation and comments, with limits per topic of three minutes per person and fifteen minutes total; however, the Board President or Committee Chairman may waive said limitations, as appropriate.

A motion was duly made and seconded to adopt the Policy for Board of Directors and Board Committee Meetings. After the vote, Mr. Ciapponi announced that the Board approved the action, with the vote as follows:

President Peracchi: Aye  
Director Anderson: Aye  
Director Coelho: Aye  
Director Esajian: Absent  
Director Enos: Aye  
Director Errotabere: Aye  
Director Neves: Aye  
Director Sano: Aye  
Director Woolf: Aye

#### Request by the City of Huron to Purchase Water

Mr. Gutierrez reported that in early June, the District received an inquiry from the City of Huron regarding the availability of water for sale. In 2013-2014, the City purchased water from the San Luis & Delta-Mendota Water Authority for municipal and industrial use. The City once again requires additional water to meet its municipal and industrial needs. If the sale were approved, the District would charge its M&I rate of \$1,144.43 per acre-foot. The Finance & Administration Committee reviewed the City of Huron's request and recommended approval.

A motion was duly made and seconded to approve the sale of up to 50 acre-feet of 2014-2015 Supplemental Water to the City of Huron for municipal and industrial use. After the vote, Mr. Ciapponi announced that the Board approved the action, with the vote as follows:

President Peracchi: Aye  
Director Anderson: Aye  
Director Coelho: Aye

Director Esajian: Absent  
 Director Enos: Aye  
 Director Errotabere: Aye  
 Director Neves: Aye  
 Director Sano: Aye  
 Director Woolf: Aye

#### Budget Transfers and Augmentations

Director Enos reported that the Finance & Administration Committee met and discussed a budget transfer and augmentation for the replacement of a utility truck and small tools/equipment which had been stolen, and recommended the Board approve the budget transfer and augmentation.

A motion was duly made and seconded to approve the 2014-2015 transfer and augmentation for the stolen property:

<u>Budget Code</u>	<u>Description</u>	<u>Incr Exp/ Decr Rev</u>	<u>Incr Rev/ Decr Exp</u>
<u>EXPENSE</u>			
54800 XXXXXXXX	Small Tools & Equipment	\$ 31,000	
11280 09219001	Capital Assets – Autos & Trucks	54,000	
15420 04 219899	Contingency Reserve		31,000
	Subtotal	<u>\$ 85,000</u>	<u>\$ 31,000</u>
	TOTAL EXPENSE	<u>\$ 54,000</u>	
<u>REVENUE</u>			
49690	Other Non-Operating Revenue		\$ 5,500
XXXX XXXXXXXX	Vehicle Reserves		48,500
	Subtotal	<u>\$ -</u>	<u>\$ 54,000</u>
	TOTAL REVENUE		<u>\$ 54,000</u>

After the vote, Mr. Ciapponi announced that the Board approved the budget augmentation and transfer, with the vote as follows:

President Peracchi: Aye  
 Director Anderson: Aye  
 Director Coelho: Aye  
 Director Esajian: Absent  
 Director Enos: Aye  
 Director Errotabere: Aye  
 Director Neves: Aye



Director Sano: Aye  
Director Woolf: Aye

Director Enos reported that the Finance & Administration Committee met and discussed a budget transfer for the item that ran in the LA Times, and recommended the Board approve the budget transfer.

A motion was duly made and seconded to approve the 2014-2015 transfer for advertising expenses:

<u>Budget Code</u>	<u>Description</u>	<u>Incr Exp/ Decr Rev</u>	<u>Incr Rev/ Decr Exp</u>
<u>EXPENSE</u>			
56200 01311799	Advertising & Public Notices	\$ 32,300	
15420 04219899	Contingency Reserve		32,300
	Subtotal	<u>\$ 32,300</u>	<u>\$ 32,300</u>
	TOTAL EXPENSE	<u>\$ -</u>	
<u>REVENUE</u>			
			\$ -
			-
	Subtotal	<u>\$ -</u>	<u>\$ -</u>
	TOTAL REVENUE		<u>\$ -</u>

After the vote, Mr. Ciapponi announced that the Board approved the budget transfer, with the vote as follows:

President Peracchi: Aye  
Director Anderson: Aye  
Director Coelho: Aye  
Director Esajian: Absent  
Director Enos: Aye  
Director Errotabere: Aye  
Director Neves: Aye  
Director Sano: Aye  
Director Woolf: Aye

#### Accounts Payable Reports

Director Enos reported that the Committee had reviewed the cash disbursements after the October 2014 meeting and the November 2014 payables and found that they were in order.

A motion was duly made and seconded to approve the accounts payable reports. After the vote, Mr. Ciapponi announced that the Board approved the accounts payable reports, with the vote as follows:

President Peracchi: Aye

Director Anderson: Aye

Director Coelho: Aye

Director Esajian: Absent

Director Enos: Aye

Director Errotabere: Aye

Director Neves: Aye

Director Sano: Aye

Director Woolf: Aye

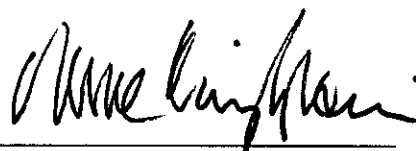
#### Investments and Financial Reports

Ms. Ormonde reported on the District's investments and financial statements, copies of which are attached.

#### CLOSED SESSION

The Board met in closed session to confer 1) with legal counsel on existing litigation, pursuant to Government Code section 54956.9, regarding Westlands v. U.S., San Luis & Delta-Mendota Water Authority v. Natural Resources Defense Council, Pacific Coast Federation of Fishermen's Association v. U.S. Department of Interior, San Joaquin County RCD v. Central Valley Regional Board, North Coast Rivers Alliance v. Westlands, and San Luis & Delta-Mendota Water Authority v. Salazar; 2) with legal counsel on anticipated litigation, pursuant to Government Code section 54956.9; and 3) with real property negotiators, pursuant to Government Code section 54956.8, regarding land and/or water entitlement.

Upon returning from closed session, Mr. Birmingham reported that while in closed session the Board provided instructions to real property negotiators.



Dave Ciapponi, Secretary

**THIRD AMENDMENT OF PURCHASE AND SALE AGREEMENT  
AND ESCROW INSTRUCTIONS**

THIS THIRD AMENDMENT OF PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "Third Amendment") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date"), by and between WESTLANDS WATER DISTRICT, a California water district ("Seller"), and SITECO, LLC, a Delaware limited liability company ("Buyer"), with reference to the following facts:

A. Seller and Buyer are parties to that certain Purchase and Sale Agreement and Escrow Instructions dated as of January 21, 2011 (the "Original Agreement"), the First Amendment to Purchase and Sale Agreement and Escrow Instructions dated as of July 16, 2013 (the "First Amendment"), and the Second Amendment of Purchase and Sale Agreement and Escrow Instructions dated as of June 17, 2014 (the "Second Amendment") (the Original Agreement, as amended by the First Amendment and the Second Amendment, collectively, the "Agreement"), pursuant to which Buyer obtained an exclusive and irrevocable option to acquire certain real property situated in Fresno County, California, as more fully described in the Agreement (the "Property").

B. A Memorandum of Purchase and Sale Agreement and Escrow Instructions dated as of January 21, 2011, by and between Seller and Buyer, was recorded on February 10, 2011, in the Official Records of Fresno County, California, as Document 2011-0021974, and amended by that certain First Amendment to Memorandum of Purchase and Sale Agreement and Escrow Instructions dated as of July 16, 2013, and recorded on August 7, 2013, in the Official Records of Fresno County, California, as Document 2013-0111999 (together, the "Memorandum").

C. Buyer partially assigned its option to purchase approximately 1,898 acres of the Property to RE Tranquillity LandCo LLC, a Delaware limited liability company ("RE Tranquillity LandCo") pursuant to that certain Partial Assignment and Assumption Agreement dated as of December 15, 2014, a memorandum of which was dated December 19, 2014 and recorded on December 23, 2014, in the Official Records of Fresno County, California, as Document 2014-0143759. The purchase of such 1,898 acres by RE Tranquillity LandCo occurred on December 30, 2014.

D. Seller and Buyer have agreed to further amend the Agreement to, among other things, provide for additional Extension Periods to extend the term of the Agreement, and to provide for the continued payment of Extension Payments for the remainder of the extended term.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned hereby agree as follows:

1. Defined Terms. All capitalized terms referred to herein shall have the same meaning provided in the Agreement, except where expressly defined to the contrary herein.

2. Extension Periods. Seller hereby agrees that the Extension Payment for Extension Period 14 (February 21, 2015 to May 21, 2015), as set forth in Section 5 of the Second Amendment in

the amount of \$600,000 has been waived, and that Buyer is not required to make such Extension Payment. The table of Extension Periods and Extension Payments at Section 8(b) of the Original Agreement, as amended by the Second Amendment, is hereby deleted and replaced by the following chart as it pertains to the extended term of the Agreement:

<u>Extension Period</u> <u>(for period following the</u> <u>Effective Date of Third Amendment)</u>	<u>Extension Payment</u>
Extension 1 (June 5, 2015 to September 21, 2015)	\$320,000
Extension 2 (September 21, 2015 to January 21, 2016) (4 months)	\$320,000
Extension 3 (January 21, 2016 to May 21, 2016) (4 months)	\$320,000
Extension 4 (May 21, 2016 to September 21, 2016) (4 months)	\$320,000
Extension 5 (September 21, 2016 to January 21, 2017) (4 months)	\$320,000
Extension 6 (January 21, 2017 to April 21, 2017) (3 months)	\$320,000
Extension 7 (April 21, 2017 to July 21, 2017) (3 months)	\$320,000
Extension 8 (July 21, 2017 to October 21, 2017) (3 months)	\$320,000
Extension 9 (October 21, 2017 to January 21, 2018) (3 months)	\$320,000
Extension 10 (January 21, 2018 to April 21, 2018) (3 months)	\$320,000

3. Reimbursement of Expenses. Within ten (10) business days after full execution of this Third Amendment, Buyer shall pay Five Thousand Dollars (\$5,000) directly to Seller to reimburse Seller for internal and external staff and legal costs incurred by Seller in connection with this Third Amendment. No portion of such payment shall be refundable or credited to the Purchase Price in the event Buyer elects to proceed with a Closing.

4. Amendment of Memorandum; Recordation. Seller and Buyer agree that this Third Amendment shall not be recorded, but concurrent with the execution hereof, Seller and Buyer shall execute a Second Amendment to Memorandum of Purchase and Sale Agreement

and Escrow Instructions in the form attached hereto as Exhibit A (the "Second Amendment to Memorandum"), and each party agrees to cause such instrument to be recorded in the Official Records of Fresno County, California.

5. Interpretation of Amendment. Except to the extent expressly set forth herein, the Agreement shall remain in full force and effect.

6. Binding Effect. Seller and Buyer confirm that the Agreement is binding on the undersigned and further approve of the Agreement, except as may be inconsistent with the specific terms of this Third Amendment, and acknowledge that the undersigned are bound thereby. Seller further acknowledges that Seller has received the Deposit and all Extension Payments due as of the date hereof.

7. Multiple Counterparts. This Third Amendment may be executed in counterparts, which when taken together shall constitute one and the same instrument. The parties contemplate that they may be executing counterparts of this Third Amendment transmitted by facsimile or electronic mail and agree and intend that a signature by facsimile machine or electronic mail shall bind the party so signing with the same effect as though the signature were an original signature.


8. Entire Agreement. Together with the Agreement, this Third Amendment constitutes the entire agreement of Seller and Buyer with respect to the subject matter of this Third Amendment and the Agreement and supersedes any and all oral and written agreements and understandings with respect to the subject matter of this Third Amendment and the Agreement by and between the parties.

*[remainder of page intentionally left blank]*

IN WITNESS WHEREOF, Seller and Buyer have executed this Third Amendment as of the day and year first above written.

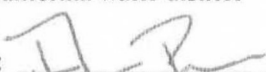
BUYER:

SITECO, LLC,  
a Delaware limited liability company

By:   
Name: Mitchell Randall  
Its: Vice President

SELLER:

WESTLANDS WATER DISTRICT,  
a California water district

By:   
Name: Dan Pope  
Its: Chief Operating Officer

**EXHIBIT A**

**FORM OF SECOND AMENDMENT TO MEMORANDUM OF PURCHASE AND SALE AGREEMENT  
AND ESCROW INSTRUCTIONS**

Recording requested by  
And when recorded mail to:

SiteCo, LLC  
300 California Street, 7th Floor  
San Francisco, CA 94104  
Attention: Office of the General Counsel

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**SECOND AMENDMENT TO MEMORANDUM OF PURCHASE AND SALE  
AGREEMENT AND ESCROW INSTRUCTIONS**

This SECOND AMENDMENT TO MEMORANDUM OF PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "Amendment") dated as of \_\_\_\_\_, 2015, is entered into by and between Westlands Water District, a California water district ("Seller"), and SiteCo, LLC, a Delaware limited liability company ("Buyer").

**RECITALS**

A. Seller and Buyer are parties to that certain Purchase and Sale Agreement and Escrow Instructions dated as of January 21, 2011 (the "Original Agreement"), the First Amendment to Purchase and Sale Agreement and Escrow Instructions dated July 16, 2013 (the "First Amendment"), and the Second Amendment to Purchase and Sale Agreement and Escrow Instructions dated as of June 17, 2014 (the "Second Amendment") (the Original Agreement, as amended by the First Amendment and the Second Amendment, collectively, the "Agreement"), pursuant to which Buyer obtained an exclusive and irrevocable option to acquire certain real property situated in Fresno County, California, as more fully described in the Agreement (the "Property").

B. A memorandum of the Original Agreement, titled Memorandum of Purchase and Sale Agreement and Escrow Instructions, dated as of January 21, 2011, was recorded on February 10, 2011, as Document 2011-0021974 in the Official Records of Fresno County, California (the "Original Memorandum").

C. The Original Memorandum was amended by that certain First Amendment to Memorandum of Purchase and Sale Agreement and Escrow Instructions, dated as of July 16, 2013 and recorded on August 7, 2013, as Document 2013-0111999 in the Official Records of Fresno County, California (the "First Amendment to Memorandum") (the Original Memorandum, as amended by the First Amendment to Memorandum, collectively referred to as the "Memorandum").

D. Seller and Buyer have now entered into that certain Third Amendment of Purchase and Sale Agreement and Escrow Instructions, dated as of \_\_\_\_\_, 2015 (the "Third Amendment"), to extend the term of the Agreement.

NOW, THEREFORE, Seller and Buyer hereby agree that the Memorandum is amended as follows:

1. Description of the Property. The remaining Property subject to the Agreement is described on Exhibit A attached hereto and incorporated herein (the "Remaining Property"). Seller and Buyer hereby agree that the Remaining Property is comprised of approximately 1,773 acres.

2. Extension Periods. The Third Amendment provides Buyer with the right to extend the term of the Agreement for ten (10) additional successive Extension Periods, which if fully exercised by Buyer, extends the term of the Agreement to April 21, 2018.

3. Effect of Memorandum Amendment. Seller and Buyer have executed and recorded this Amendment to give notice of the Third Amendment and their respective rights and obligations with respect to the Remaining Property. In the event of any inconsistency between the terms of this Amendment and the Third Amendment, the terms of the Third Amendment shall prevail.

4. Counterparts. This Amendment may be executed in any number of counterparts, each of which when executed and delivered shall be an original, and each such counterpart shall, when combined with all other such counterparts, constitute one agreement binding on the parties hereto.

5. Ratification. Except as amended hereby, the Memorandum is hereby ratified and confirmed and shall continue in full force and effect.

[Remainder of page intentionally left blank; signature page follows.]



IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first written above.

**SELLER:**

Westlands Water District,  
a California water district

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**BUYER:**

SiteCo, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of the Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of the Notary Public

Exhibit A  
to Second Amendment to Memorandum of Purchase and Sale Agreement  
and Escrow Instructions

Description of Remaining Property

Real property in the unincorporated area of the County of Fresno, State of California, described as follows:

PARCEL 1: APN: 038-320-01-S

LOTS 31 AND 32 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912 IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS, MINERALS AND OTHER HYDROCARBONS SITUATED THEREIN AND THEREUNDER SAID PROPERTY AS RESERVED BY RICHARD F. STEWART IN DEED RECORDED JUNE 20, 1989 AS INSTRUMENT NO. 89064809 OF OFFICIAL RECORDS.

PARCEL 2: APN: 038-320-06-S

LOTS 17 AND 18 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF SUBDIVISION OF SAID SECTION, BEING A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912 IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

EXCEPTING THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN AND TO ALL OIL, GAS AND HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATE THEREIN AND THEREUNDER, AS RESERVED IN THE DEED BY EDWARD T. LAUGHLIN AND JEANNE B. LAUGHLIN, RECORDED AUGUST 12, 1969 AS INSTRUMENT NO. 55354 OF OFFICIAL RECORDS.

ALSO EXCEPTING AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND MINERAL RIGHTS OF WHATSOEVER NATURE AND DESCRIPTION IN AND UNDER SAID PROPERTY, WITH THE RIGHT TO PROSPECT FOR AND EXPLOIT THE SAME, AND TO MAKE SUFFICIENT USE OF THE SURFACE OF THE REAL PROPERTY AND ALL EASEMENTS AND RIGHTS OF WAY APPURTENANT THERETO, FOR SAID PURPOSES, AND FOR INGRESS AND EGRESS THERETO AND THEREFROM, AND THE RIGHT TO LAY, MAINTAIN, AND OPERATE PIPELINES OVER AND ACROSS THE REAL PROPERTY FOR THE TRANSPORTATION OF OIL AND GAS, PROVIDED THAT SHOULD GRANTOR, ITS SUCCESSORS, ASSIGNS OR LESSEES IN ANY WAY DAMAGE ANY GROWING CROPS OR OTHER IMPROVEMENTS ON THE REAL PROPERTY IN EXPLOITING OR DEVELOPING THE REAL PROPERTY OR ANY PART THEREOF FOR OIL, GAS OR OTHER MINERALS, THEN THE GRANTOR SHALL PAY SUCH DAMAGES TO THE GRANTEE OR ITS SUCCESSORS AT THE TIME SUCH DAMAGE IS COMMITTED, EXCEPT INsofar AS SUCH DAMAGES ARE UNDERTAKEN AND AGREED TO BE PAID BY ANY LESSEE OF THE GRANTOR OF ITS SUCCESSORS OR ASSIGNS, AS RESERVED BY KRIESANT OPERATING COMPANY, INC., IN DEED RECORDED APRIL 5, 1988 AS INSTRUMENT NO. 88035706, OFFICIAL RECORDS.

PARCEL 3: APN: 038-320-24-S

LOT 16 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912 IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

EXCEPTING THEREFROM AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND MINERAL RIGHTS OF WHATSOEVER NATURE AND DESCRIPTION IN AND UNDER SAID PROPERTY, WITH THE RIGHT TO PROSPECT FOR AND EXPLOIT THE SAME, AND TO MAKE SUFFICIENT USE OF THE SURFACE OF THE REAL PROPERTY AND ALL EASEMENTS AND RIGHTS OF WAY APPURTENANT THERETO, FOR SAID PURPOSES, AND FOR INGRESS AND EGRESS THERETO AND THEREFROM, AND THE RIGHT TO LAY, MAINTAIN, AND OPERATE PIPELINES OVER AND ACROSS THE REAL PROPERTY FOR THE TRANSPORTATION OF OIL AND GAS, PROVIDED THAT SHOULD GRANTOR, ITS SUCCESSORS, ASSIGNS OR LESSEES IN ANY WAY DAMAGE ANY GROWING CROPS OR OTHER IMPROVEMENTS ON THE REAL PROPERTY IN EXPLOITING OR DEVELOPING THE REAL PROPERTY OR ANY PART THEREOF FOR OIL, GAS OR OTHER MINERALS, THEN THE GRANTOR SHALL PAY SUCH DAMAGES TO THE GRANTEE OR ITS SUCCESSORS AT THE TIME SUCH DAMAGE IS COMMITTED, EXCEPT INsofar AS SUCH DAMAGES ARE UNDERTAKEN AND AGREED TO BE PAID BY ANY LESSEE OF THE GRANTOR OF ITS SUCCESSORS OR ASSIGNS, AS RESERVED BY KRIESANT OPERATING COMPANY, INC., IN DEEDS RECORDED APRIL 5, 1988 AS INSTRUMENT NOS. 88035703 AND 88035704, BOTH OF OFFICIAL RECORDS.

PARCEL 4: APN: 038-320-25-S

LOT 15 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912 IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS AND MINERAL RIGHTS OF WHATSOEVER NATURE AND DESCRIPTION IN AND UNDER SAID PROPERTY, WITH THE RIGHT TO PROSPECT FOR AND EXPLOIT THE SAME, AND TO MAKE SUFFICIENT USE OF THE SURFACE OF THE REAL PROPERTY AND ALL EASEMENTS AND RIGHTS OF WAY APPURTENANT THERETO, FOR SAID PURPOSES, AND FOR INGRESS AND EGRESS THERETO AND THEREFROM, AND THE RIGHT TO LAY, MAINTAIN, AND OPERATE PIPELINES OVER AND ACROSS THE REAL PROPERTY FOR THE TRANSPORTATION OF OIL AND GAS, PROVIDED THAT SHOULD GRANTOR, ITS SUCCESSORS, ASSIGNS OR LESSEES IN ANY WAY DAMAGE ANY GROWING CROPS OR OTHER IMPROVEMENTS ON THE REAL PROPERTY IN EXPLOITING OR DEVELOPING THE REAL PROPERTY OR ANY PART THEREOF FOR OIL, GAS OR OTHER MINERALS, THEN THE GRANTOR SHALL PAY SUCH DAMAGES TO THE GRANTEE OR ITS SUCCESSORS AT THE TIME SUCH DAMAGE IS COMMITTED, EXCEPT INsofar AS SUCH DAMAGES ARE UNDERTAKEN AND AGREED TO BE PAID BY ANY LESSEE OF THE GRANTOR OF ITS SUCCESSORS OR ASSIGNS, AS RESERVED BY KRIESANT OPERATING COMPANY, INC., IN DEED RECORDED APRIL 5, 1988 AS INSTRUMENT NO. 88035705, OFFICIAL RECORDS.

PARCEL 5: APN: 038-320-27-S

LOT 3 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF SUBDIVISION OF SAID SECTION, BEING A PART OF CALIFORNIA LAND INVESTMENT

COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912 IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND MINERALS WITHIN OR UNDERLYING SAID PROPERTY, AS RESERVED BY HARRY KIRKPATRICK THE DULY APPOINTED, QUALIFIED AND ACTING ADMINISTRATOR OF THE ESTATE OF ALEXANDER KIRKPATRICK, ALSO KNOWN AS ALEX KIRKPATRICK, DECEASED, RECORDED MAY 6, 1948 AS INSTRUMENT NO. 22420 IN BOOK 2595, PAGE 450 OF OFFICIAL RECORDS.

PARCEL 6: APN: 038-320-28-S

LOT 14 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF SUBDIVISION OF SAID SECTION, BEING A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912 IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND MINERALS WITHIN OR UNDERLYING SAID PROPERTY, AS RESERVED BY HARRY KIRKPATRICK THE DULY APPOINTED, QUALIFIED AND ACTING ADMINISTRATOR OF THE ESTATE OF ALEXANDER KIRKPATRICK, ALSO KNOWN AS ALEX KIRKPATRICK, DECEASED, RECORDED MAY 6, 1948 AS INSTRUMENT NO. 22420 IN BOOK 2595, PAGE 450 OF OFFICIAL RECORDS.

PARCEL 7: APN: 038-320-16

LOT 1, SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF PART OF CALIFORNIA LAND INVESTMENT CO'S TRACT NO. 1, RECORDED IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF FRESNO COUNTY ON MAY 8, 1912.

PARCEL 8: APN: 038-320-30-S

LOT 2 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF SUBDIVISION OF SAID SECTION, BEING A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912 IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND MINERALS WITHIN OR UNDERLYING SAID PROPERTY, AS RESERVED BY HARRY KIRKPATRICK THE DULY APPOINTED, QUALIFIED AND ACTING ADMINISTRATOR OF THE ESTATE OF ALEXANDER KIRKPATRICK, ALSO KNOWN AS ALEX KIRKPATRICK, DECEASED, RECORDED MAY 6, 1948 AS INSTRUMENT NO. 22420 IN BOOK 2595, PAGE 450 OF OFFICIAL RECORDS.

PARCEL 9: APN: 038-320-29-S

LOT 19 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF

SUBDIVISION OF SAID SECTION, BEING A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912 IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND MINERALS WITHIN OR UNDERLYING SAID PROPERTY, AS RESERVED BY HARRY KIRKPATRICK THE DULY APPOINTED, QUALIFIED AND ACTING ADMINISTRATOR OF THE ESTATE OF ALEXANDER KIRKPATRICK, ALSO KNOWN AS ALEX KIRKPATRICK, DECEASED, RECORDED MAY 6, 1948 AS INSTRUMENT NO. 22420 IN BOOK 2595, PAGE 450 OF OFFICIAL RECORDS.

PARCEL 10: APN: 038-320-02

BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 7, PAGE 49 OF RECORDS OF SURVEYS, FRESNO COUNTY OFFICIAL RECORDS.

PARCEL 11: APN: 038-320-37-S

LOT 13 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF SUBDIVISION OF SAID SECTION, BEING A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912 IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND MINERALS WITHIN OR UNDERLYING SAID PROPERTY, AS RESERVED BY HARRY KIRKPATRICK THE DULY APPOINTED, QUALIFIED AND ACTING ADMINISTRATOR OF THE ESTATE OF ALEXANDER KIRKPATRICK, ALSO KNOWN AS ALEX KIRKPATRICK, DECEASED, RECORDED MAY 6, 1948 AS INSTRUMENT NO. 22420 IN BOOK 2595, PAGE 450 OF OFFICIAL RECORDS.

PARCEL 12: APN: 038-320-38-S

LOT 12 IN SECTION 2, TOWNSHIP 16 SOUTH, RANGE 14 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP OF SUBDIVISION OF SAID SECTION, BEING A PART OF CALIFORNIA LAND INVESTMENT COMPANY'S TRACT NO. 1, RECORDED MAY 8, 1912 IN BOOK 7, PAGE 49 OF RECORD OF SURVEYS, FRESNO COUNTY RECORDS.

EXCEPTING THEREFROM ALL OIL, GAS, PETROLEUM AND OTHER HYDROCARBON SUBSTANCES AND MINERALS WITHIN OR UNDERLYING SAID PROPERTY, AS RESERVED BY HARRY KIRKPATRICK THE DULY APPOINTED, QUALIFIED AND ACTING ADMINISTRATOR OF THE ESTATE OF ALEXANDER KIRKPATRICK, ALSO KNOWN AS ALEX KIRKPATRICK, DECEASED, RECORDED MAY 6, 1948 AS INSTRUMENT NO. 22420 IN BOOK 2595, PAGE 450 OF OFFICIAL RECORDS.

PARCEL 13: APN: 028-111-52

THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THE FOLLOWING:

COMMENCING AT A POINT FORMING THE SOUTHWEST CORNER OF SAID SECTION 31; THENCE NORTHERLY ALONG THE WEST LINE OF SAID SECTION, 360 FEET; THENCE AT RIGHT ANGLES EASTERLY 360 FEET; THENCE AT RIGHT ANGLES SOUTHERLY 360 FEET TO THE SOUTH LINE OF SAID SECTION; THENCE AT RIGHT ANGLES WESTERLY TO THE POINT OF BEGINNING; ALSO EXCEPT THEREFROM ANY PORTION THEREOF WHICH LIES WITHIN THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID SOUTHWEST CORNER BEING AT COORDINATES Y=454694.379 FEET AND X=1592456.595 FEET; THENCE (1) ALONG THE SOUTH LINE OF SAID SECTION 31, SOUTH 88° 30' 55" EAST 141.64 FEET; THENCE (2) NORTH 58° 41' 15" WEST 82.72 FEET TO THE EAST LINE OF THE WEST 70 FEET OF THE SOUTHWEST QUARTER OF SAID SECTION 31; THENCE (3) ALONG SAID EAST LINE NORTH 01° 18' 45" EAST 2571.30 FEET; THENCE (4) NORTH 61° 18' 45" EAST 82.72 FEET TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 31; THENCE (5) ALONG SAID NORTH LINE NORTH 88° 36' 17" WEST 141.64 FEET TO THE WEST LINE OF SAID SECTION 31; THENCE (6) ALONG SAID WEST LINE NORTH 01° 18' 45" EAST 2654.80 FEET TO THE NORTHWEST CORNER OF SAID SECTION 31; THENCE (7) ALONG THE NORTH LINE OF SAID SECTION 36 NORTH 88° 53' 39" WEST 101.64 FEET; THENCE (8) SOUTH 58° 41' 15" EAST 82.72 FEET TO THE WEST LINE OF THE EAST 30 FEET OF SAID SECTION 36; THENCE (9) ALONG SAID WEST LINE SOUTH 01° 18' 45" WEST 5224.75 FEET; THENCE (10) SOUTH 61° 18' 45" WEST 82.72 FEET TO THE SOUTH LINE OF SAID SECTION 36; THENCE (11) ALONG LAST SAID SOUTH LINE SOUTH 88° 49' 20" EAST 101.64 FEET TO THE POINT OF BEGINNING;

ALSO EXCEPT THEREFROM ONE-HALF OF ALL THE OIL, GAS AND MINERALS WITHIN SAID LAND AND ONE-HALF OF ALL OIL, GAS AND MINERAL RIGHTS IN AND TO ANY OF SUCH PRODUCTS EXTRACTED FROM SAID LAND, AS RESERVED IN THE DEED FROM I. TEILMAN AND ANNIE K. TEILMAN, HIS WIFE, TO F.A. YEAROUT, DATED MAY 2, 1941 AND RECORDED MAY 15, 1941 IN BOOK 1946 PAGE 309 OF OFFICIAL RECORDS, DOCUMENT NO. 17541;

ALSO EXCEPTING AND RESERVING UNTO FLOYD A. YEAROUT, AN UNDIVIDED 3/16THS INTEREST (18 3/4% OUT OF 100%) AND UNTO RAYMOND L. YEAROUT, AN UNDIVIDED 1/16THS INTEREST (6 1/4% OUT OF 100%) IN AND TO ALL OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS LOCATED IN, ON OR UNDER THE REAL PROPERTY ABOVE DESCRIBED, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS TO SAID PROPERTY FOR THE PURPOSE OF EXTRACTING OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS FROM SAID PROPERTY AND TOGETHER WITH ALL OTHER RIGHTS NECESSARY FOR SAID PURPOSES, AS RESERVED IN THE DEED FROM FLOYD A. YEAROUT, ALSO KNOWN AS F. A. YEAROUT AND ANNA V. YEAROUT, HIS WIFE, RAYMOND L. YEAROUT AND WILDA YEAROUT, HIS WIFE, TO SUMNER PECK RANCH, INC., A CORPORATION, DATED FEBRUARY 10, 1952, RECORDED FEBRUARY 18, 1952 IN BOOK 3124 PAGE 527 OF OFFICIAL RECORDS, DOCUMENT NO. 8803.

PARCEL 14: APN: 028-111-53

THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

COMMENCING AT A POINT FORMING THE SOUTHWEST CORNER OF SAID SECTION 31; THENCE



NORTHERLY ALONG THE WEST LINE OF SAID SECTION 360 FEET; THENCE AT RIGHT ANGLES EASTERLY 360 FEET; THENCE AT RIGHT ANGLE SOUTHERLY 360 FEET TO THE SOUTH LINE OF SAID SECTION; THENCE AT RIGHT ANGLES WESTERLY TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ANY PORTION THEREOF WHICH LIES WITHIN THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, SAID SOUTHWEST CORNER BEING AT COORDINATES Y=454694.379 FEET AND X=1592456.595 FEET; THENCE (1) ALONG THE SOUTH LINE OF SAID SECTION 31, SOUTH 88° 30' 55" EAST 141.64 FEET; THENCE (2) NORTH 58° 41' 15" WEST 82.72 FEET TO THE EAST LINE OF THE WEST 70 FEET OF THE SOUTHWEST QUARTER OF SAID SECTION 31; THENCE (3) ALONG SAID EAST LINE NORTH 01° 18' 45" EAST 2571.30 FEET; THENCE (4) NORTH 61° 18' 45" EAST 82.72 FEET TO THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 31; THENCE (5) ALONG SAID NORTH LINE NORTH 88° 36' 17" WEST 141.64 FEET TO THE WEST LINE OF SAID SECTION 31; THENCE (6) ALONG SAID WEST LINE NORTH 01° 18' 45" EAST 2654.80 FEET TO THE NORTHWEST CORNER OF SAID SECTION 31; THENCE (7) ALONG THE NORTH LINE OF SAID SECTION 36 NORTH 88° 53' 39" WEST 101.64 FEET; THENCE (8) SOUTH 58° 41' 15" EAST 82.72 FEET TO THE WEST LINE OF THE EAST 30 FEET OF SAID SECTION 36; THENCE (9) ALONG EAST SAID WEST LINE SOUTH 01° 18' 45" WEST 5224.75 FEET; THENCE (10) SOUTH 61° 18' 45" WEST 82.72 FEET TO THE SOUTH LINE OF SAID SECTION 36; THENCE (11) ALONG LAST SAID SOUTH LINE SOUTH 88° 49' 20" EAST 101.64 FEET TO THE POINT OF BEGINNING;

ALSO EXCEPT THEREFROM ONE-HALF OF ALL THE OIL, GAS AND MINERALS WITHIN SAID LAND AND ONE-HALF OF ALL OIL, GAS AND MINERAL RIGHTS IN AND TO ANY OF SUCH PRODUCTS EXTRACTED FROM SAID LAND, AS RESERVED IN THE DEED FROM I. TEILMAN AND ANNIE K. TEILMAN, HIS WIFE, TO F.A. YEAROUT, DATED MAY 2, 1941 AND RECORDED MAY 15, 1941 IN BOOK 1946 PAGE 309 OF OFFICIAL RECORDS, DOCUMENT NO. 17541.

PARCEL 15: APN: 028-111-44

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM AN UNDIVIDED 25% INTEREST IN AN TO ALL OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM IN AND WATER UNDER SAID REAL PROPERTY AS RESERVED BY ANNETTE MARIE TYLER IN DEED FROM RAPHAEL G. TYLER AND ELIZABETH G. TYLER, HUSBAND AND WIFE; ANNETTE M. TYLER AND MADELINE F. TYLER, BOTH SINGLE WOMEN TO VESTES HEREIN RECORDED FEBRUARY 22, 1978, AS DOCUMENT NO. 19078.

ALSO EXCEPTING THEREFROM AN UNDIVIDED 25% INTEREST IN AN TO ALL OIL, GAS, OTHER HYDROCARBON SUBSTANCES, MINERALS AND NATURALLY CREATED HOT WATER AND STEAM IN AND UNDER SAID REAL PROPERTY AS RESERVED BY MADELINE FRANCES TYLER IN DEED BY AND BETWEEN RAPHAEL G. TYLER AND ELIZABETH G. TYLER, HUSBAND AND WIFE; ANNETTE M. TYLER AND MADELINE F. TYLER, BOTH SINGLE WOMEN TO VESTES HEREIN, RECORDED FEBRUARY 22, 1978, AS DOCUMENT NO. 19074.

PARCEL 16: APN: 028-111-45

THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 17: APN: 028-111-46

THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 18: APN: 028-111-47 (PORTION)

THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM ONE-HALF OF ALL OIL, GAS AND MINERALS AS RESERVED IN THE DEED FROM FLORENCE H. DE FOE AND FRANCIS A. ORFF, A MARRIED MAN, RECORDED JANUARY 6, 1965, AS DOCUMENT NO. 724.

PARCEL 19: APN: 028-111-47 (PORTION)

THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT THEREFROM AN UNDIVIDED 50% OF 100% INTEREST IN AND TO ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS (EXCEPT WATER) LYING UNDER THE SURFACE OF SAID LAND, AS RESERVED BY CARL C. DUNCAN AND MARY L. DUNCAN, HUSBAND AND WIFE IN DEED RECORDED OCTOBER 24, 1968, AS DOCUMENT NO. 76120.

PARCEL 20: APN: 028-111-50 (PORTION)

THE SOUTH 208.71 FEET OF THE WEST 208.71 FEET OF NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION, SAID SOUTHWEST CORNER BEING AT COORDINATES Y=457 347.300 FEET AND X=1 592

517.377 FEET;

THENCE (1) ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION, SOUTH 88° 36' 17" EAST, 141.64 FEET; THENCE (2) NORTH 58° 41' 15" WEST 82.72 FEET TO THE EAST LINE OF THE WEST 70 FEET OF THE NORTHWEST QUARTER OF SAID SECTION;

THENCE (3) ALONG SAID EAST LINE, NORTH 01° 18' 45" EAST, 167.45 FEET TO THE NORTH LINE OF THE SOUTH 208.71 FEET OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE (4) ALONG SAID NORTH LINE, NORTH 88° 36' 17" WEST, 70.00 FEET TO THE WEST LINE OF SAID SECTION; THENCE (5) ALONG SAID WEST LINE, SOUTH 01° 18' 45" WEST, 208.71 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM ALL THAT PORTION THEREOF DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION, SAID POINT BEARS SOUTH 88° 36' 17" EAST, 141.64 FEET FROM THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION, SAID SOUTHWEST CORNER BEING AT COORDINATES Y=457347.300 FEET AND X=1592 527.377 FEET; THENCE (1) NORTH 58° 41' 15" WEST 82.72 FEET TO THE EAST LINE OF THE WEST 70 FEET OF SAID SECTION; THENCE (2) ALONG SAID EAST LINE, NORTH 01° 16' 45" EAST, 167.45 FEET TO THE NORTH LINE OF THE SOUTH 208.71 FEET OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE (3) ALONG SAID NORTH LINE, SOUTH 88° 36' 17" EAST, 20.00 FEET; THENCE (4) ALONG A LINE PARALLEL WITH COURSE (2) HEREINABOVE DESCRIBED, SOUTH 01° 18' 45" WEST, 75.00 FEET, THENCE (5) SOUTH 37° 40' 53" EAST, 82.07 FEET; THENCE (6) ALONG A LINE PARALLEL WITH COURSE (2) HEREINABOVE DESCRIBED, SOUTH 01° 18' 45" WEST, 70.00 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS LYING THEREIN AND THEREUNDER, TOGETHER WITH ALL EASEMENTS AND RIGHTS NECESSARY OR CONVENIENT FOR THE PRODUCTION, STORAGE AND TRANSPORTATION THEREOF AND THE EXPLORATION AND TESTING OF SAID PROPERTY AND ALSO THE RIGHT TO DRILL FOR, PRODUCE AND USE WATER FROM SAID PROPERTY IN CONNECTION WITH ITS DRILLING OR MINING OPERATIONS THEREON, AS RESERVED BY MURIEL SIGRID KOHLER, A MARRIED WOMAN AS HER SOLE AND SEPARATE PROPERTY IN THAT CERTAIN DEED DATED NOVEMBER 18, 1952, RECORDED JANUARY 14, 1953 IN BOOK 3251, PAGE 252 OF OFFICIAL RECORDS, DOCUMENT NO. 2378.

PARCEL 21: APN: 028-111-50 (PORTION)

ALL THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION, SAID POINT BEARS SOUTH 88° 36' 17" EAST, 208.71 FEET FROM THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION, SAID SOUTHWEST CORNER BEING

AT COORDINATES Y=457 347.33 AND X=1 592 517.377 FEET; THENCE (.1) NORTH 01° 18' 45" EAST, 208.71 FEET TO THE NORTH LINE OF THE SOUTH 208.71 FEET OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE (2) ALONG SAID NORTH LINE, SOUTH 88° 36' 17" EAST, 38.19 FEET; THENCE (3) ALONG A LINE PARALLEL WITH COURSE (1) HEREINABOVE DESCRIBED, SOUTH 01° 18' 45" WEST, 208.71 FEET TO SAID SOUTH LINE; THENCE (4) ALONG SAID SOUTH LINE, NORTH 88° 36' 17" WEST, 38.19 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBONS THEREIN AND THEREUNDER AS GRANTED TO MURIEL SIGRID KOHLER BY DECREE OF DISTRIBUTION RECORDED APRIL 12, 1944 IN BOOK 2165, PAGE 162, FRESNO COUNTY RECORDS.

PARCEL 22: APN: 028-111-60 (PORTION)

THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THE WEST 246.90 FEET OF THE SOUTH 208.71 FEET THEREOF.

ALSO EXCEPTING THEREFROM THE NORTH 600 FEET OF THE WEST 520 FEET THEREOF.

ALSO EXCEPTING THEREFROM ALL THAT PORTION THEREOF AS GRANTED TO THE STATE OF CALIFORNIA BY DEED RECORDED MAY 23, 1960 IN BOOK 4391, PAGE 417 OF OFFICIAL RECORDS, DOCUMENT NO. 37076.

PARCEL 22A:

AN EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THE NORTH 30 FEET OF THE NORTH 600 FEET OF THE WEST 520 FEET OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN. ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM ALL THAT PORTION THEREOF AS GRANTED TO THE STATE OF CALIFORNIA BY DEED RECORDED MAY 23, 1960 IN BOOK 4391, PAGE 417 OF OFFICIAL RECORDS, DOCUMENT NO. 37076.

PARCEL 23: APN: 028-111-60 (PORTION)

THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPT ALL OF THE OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATE THEREIN AND THEREUNDER, AS RESERVED IN THE DEED DATED APRIL 29, 1959 FROM J.J. IMPERATRICE, ALSO KNOWN AS JAMES J. IMPERATRICE AND EVELYN IMPERATRICE, HUSBAND AND WIFE, AS JOINT TENANTS, RECORDED JULY 21, 1959 IN BOOK 4250, PAGE 484 OF OFFICIAL RECORDS, DOCUMENT NO. 50988.

PARCEL 24: APN: 028-111-60 (PORTION)

THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE

15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL 25: APN: 028-111-43-S

THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 15 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM AN UNDIVIDED 50% INTEREST IN AND TO ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERALS NOW OR AT ANY TIME HEREAFTER SITUATED THEREIN AND THEREUNDER, TOGETHER WITH ALL EASEMENTS AND RIGHTS NECESSARY OR CONVENIENT FOR THE PRODUCTION, STORAGE AND TRANSPORTATION THEREOF AND THE EXPLORATION AND TESTING OF THE SAID REAL PROPERTY, AND ALSO THE RIGHT TO DRILL FOR, PRODUCE AND USE WATER FROM THE SAID REAL PROPERTY IN CONNECTION WITH DRILLING OR MINING OPERATIONS THEREON, AS RESERVED BY HELEN C. WOOD AND AURELIA REID CUNNING IN A DEED RECORDED NOVEMBER 9, 1967 AS INSTRUMENT NO. 77806 IN BOOK 5499, PAGE 441 OF OFFICIAL RECORDS.

PARCEL 26: APN:038-080-35s

THE FRACTIONAL NORTHWEST QUARTER OF SECTION 6, TOWNSHIP 16 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF; EXCEPTING THEREFROM THAT PORTION OF THE NORTHWEST QUARTER OF SAID SECTION 6, AS DEEDED TO THE STATE OF CALIFORNIA IN DEEDS RECORDED OCTOBER 16, 1972 IN BOOK 6080 PAGE 842 AND IN BOOK 6080 PAGE 848 AND RE-RECORDED IN BOOK 6124 PAGE 511, FRESNO COUNTY RECORDS.

ALSO EXCEPTING THEREFROM ALL THAT PORTION OF SAID PROPERTY CONVEYED TO THE STATE OF CALIFORNIA, BY DEED RECORDED FEBRUARY 6, 1973 IN BOOK 6124 PAGE 511 OF OFFICIAL RECORDS, DOCUMENT NO. 12208;

ALSO EXCEPTING THEREFROM 50% OF ALL MINERALS, OIL AND GAS PRODUCED, FOUND, SAVED OR RECOVERED FROM OR ON SAID REAL PROPERTY HEREINABOVE DESCRIBED, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS TO AND FROM SAID REAL PROPERTY FOR THE PURPOSE OF EXPLORING FOR, PRODUCING, OR EXPLOITING SAID MINERALS, OIL AND GAS, AND UPON THE SUCCESSFUL EXPLORATION THEREOF, THE RIGHT TO DRILL, CONSTRUCT AND ERECT DERRICKS, WELLS, MACHINERY, MINES, SHAFTS, PIPELINES, ROADS, TANKS, RESERVOIRS AND OTHER WORKS, FOR THE EXPLORATION, PRODUCTION, RECOVERY AND REMOVAL OF SAID MINERALS, OIL AND GAS, PROVIDED, HOWEVER, ALL OF SAID RIGHTS SHALL BE EXERCISED SO AS TO DO AS LITTLE DAMAGE AS POSSIBLE TO THE SURFACE AND THE GROWING CROPS AND THE IMPROVEMENTS THEREON, AND GRANTORS, THEIR HEIRS, EXECUTORS, ADMINISTRATORS AND ASSIGNS SHALL BE LIABLE FOR ANY DAMAGE TO OR INJURY OR LOSS OF SUCH GROWING CROPS OR IMPROVEMENTS RESULTING FROM THE EXERCISE OF ANY OF THE RIGHTS HEREINABOVE CONTAINED, AS RESERVED IN THE DEED FROM KEITH D. SUTHERLAND AND ELEANOR W. SUTHERLAND, HUSBAND AND WIFE, DATED NOVEMBER 30, 1960 TO SUMNER PECK RANCH, INC., A CALIFORNIA CORPORATION, RECORDED JANUARY 16, 1961 AS DOCUMENT NO. 3729.

PARCEL 27: APN: 038-080-03s

THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 16 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM ONE-HALF OF ALL THE OIL, GAS AND MINERALS WITHIN SAID LAND, AND ONE-HALF OF ALL OIL, GAS AND MINERAL RIGHTS IN AND TO ANY OF SUCH PRODUCTS EXTRACTED FROM SAID LAND, AS RESERVED IN THE DEED FROM I. TEILMAN AND ANNIE K. TEILMAN, HIS WIFE, TO F. A. YEAROUT, DATED MAY 2, 1941, RECORDED MAY 15, 1941 IN BOOK 1946 PAGE 309 OF OFFICIAL RECORDS, DOCUMENT NO. 17541;

ALSO EXCEPTING AND RESERVING UNTO FLOYD A. YEAROUT, AN UNDIVIDED 3/16THS INTEREST (18 3/4% OUT OF 100%) AND UNTO RAYMOND L. YEAROUT AN UNDIVIDED 1/16TH INTEREST (6 1/4% OUT OF 100%) IN AND TO ALL OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS LOCATED IN, ON OR UNDER THE REAL PROPERTY ABOVE DESCRIBED, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS TO SAID PROPERTY FOR THE PURPOSE OF EXTRACTING OIL, GAS, PETROLEUM, HYDROCARBON SUBSTANCES AND OTHER MINERALS FROM SAID PROPERTY, AND TOGETHER WITH ALL OTHER RIGHTS NECESSARY FOR SAID PURPOSES, AS RESERVED IN THE DEED FROM FLOYD A. YEAROUT, ALSO KNOWN AS F. A. YEAROUT AND ANNA V. YEAROUT, HIS WIFE, RAYMOND L. YEAROUT AND WILDA YEAROUT, HIS WIFE, TO SUMNER PECK RANCH, INC., A CORPORATION, DATED FEBRUARY 10, 1952, RECORDED FEBRUARY 18, 1952 IN BOOK 3124 PAGE 527 OF OFFICIAL RECORDS, DOCUMENT NO. 8803.

PARCEL 28: APN: 038-080-38s

THE FRACTIONAL SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 16 SOUTH, RANGE 15 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF;

EXCEPTING THEREFROM ALL OIL, GAS AND MINERALS IN AND UNDER SAID PROPERTY, AS GRANTED BY F. A. YEAROUT AND ANNA V. YEAROUT, HUSBAND AND WIFE, TO EUGENE ARTHUR JACQUEMART, AS TO AN UNDIVIDED ONE-THIRD INTEREST; JULIE FELICIE SKAGGS, AS TO AN UNDIVIDED ONE-THIRD INTEREST; AND JULIE FELICIE SKAGGS AND C. W. SKAGGS, HER HUSBAND, AS TO AN UNDIVIDED ONE-THIRD INTEREST, IN THE DEED DATED SEPTEMBER 6, 1940, RECORDED SEPTEMBER 17, 1940 IN BOOK 1861 PAGE 261 OF OFFICIAL RECORDS, DOCUMENT NO. 28483.

PARCEL 29: APN: 038-080-05s

THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 16 SOUTH, RANGE 15 EAST, ACCORDING TO THE OFFICIAL PLAT THEREOF;

EXCEPTING AND RESERVING UNTO GRANTORS, MARGARET N. ANTON, GRACE HELEN SINGLETON AND HAZEL C. MUSGROVE, IN DEED TO SUMNER PECK RANCH, A CORPORATION, DATED JUNE 4, 1963 AND RECORDED JULY 24, 1963 IN BOOK 4887 PAGE 262 OF OFFICIAL RECORDS, DOCUMENT NO. 58677, AN UNDIVIDED ONE-HALF INTEREST IN AND TO ALL OIL, GAS AND MINERALS.

COPIES

MONTH OF December, 20 14

[illegible]



**First American Title Company**  
**National Commercial Services**  
4380 La Jolla Village Drive, Suite 110 • San Diego, CA 92122

Office Phone: (858) 410-3900 Office Fax:

**Seller's Final Settlement Statement**

**Property:** Approx. 1898 acres, (8 separate Groups), (Fresno County), CA  
**File No:** NCS-450237-T-SD  
**Officer:** Meg K. Kilfoil/mk  
**Settlement Date:** 12/30/2014  
**Disbursement Date:** 12/30/2014  
**Print Date:** 12/30/2014, 4:51 PM

**Buyer:** RE Tranquility LandCo LLC  
**Address:** Attn: Amanda Butler, 300 California Street, 8th Floor, San Francisco, CA 94104  
**Seller:** Westlands Water District  
**Address:** Attn: Jose Gutierrez, 3130 North Fresno Street, Fresno, CA 93703-6056

Charge Description	Seller Charge	Seller Credit
<b>Consideration:</b>		
Total Consideration		14,235,000.00
<b>Adjustments:</b>		
Initial Deposit - Paid Outside of Escrow	30,000.00	
Extension Deposit - Paid Outside of Escrow	30,000.00	
Access Easement		23,126.00
<b>Prorations:</b>		
2nd Install. 2014/2015 Taxes (028-101-70S) 12/30/14 to 07/01/15 @\$16.08/semi		16.12
2nd Install. 2014/2015 Taxes (028-101-51S) 12/30/14 to 07/01/15 @\$16.08/semi		16.12
2nd Install. 2014/2015 Taxes (028-101-53) 12/30/14 to 07/01/15 @\$16.08/semi		16.12
2nd Install. 2014/2015 Taxes (028-101-50S) 12/30/14 to 07/01/15 @\$16.08/semi		16.12
2nd Install. 2014/2015 Taxes (038-320-18S) 12/30/14 to 07/01/15 @\$16.08/semi		16.12
2nd Install. 2014/2015 Taxes (038-320-23S) 12/30/14 to 07/01/15 @\$16.08/semi		16.12
2nd Install. 2014/2015 Taxes (028-101-45S) 12/30/14 to 07/01/15 @\$27.39/semi		27.47
2nd Install. 2014/2015 Taxes (028-101-46S) 12/30/14 to 07/01/15 @\$16.08/semi		16.12
2nd Install. 2014/2015 Taxes (028-101-47S) 12/30/14 to 07/01/15 @\$16.08/semi		16.12
2nd Install. 2014/2015 Taxes (028-101-48S) 12/30/14 to 07/01/15 @\$16.08/semi		16.12
2nd Install. 2014/2015 Taxes (028-101-23S) 12/30/14 to 07/01/15 @\$16.08/semi		16.12
2nd Install. 2014/2015 Taxes (028-101-22) 12/30/14 to 07/01/15 @\$16.08/semi		16.12
2nd Install. 2014/2015 Taxes (038-320-17) 12/30/14 to 07/01/15 @\$28.26/semi		28.34
<b>Title/Escrow Charges to:</b>		
Processing Fee - Release of Extension Payments (13 x \$125.00 each) [50%] to First American Title Company National Commercial Services	812.50	
Closing-Escrow Fee [50%] to First American Title Company National Commercial Services	2,500.00	
Record Grant Deed to First American Title Company National Commercial Services	47.00	
Documentary Transfer Tax-County to First American Title Company National Commercial Services	15,658.50	
<b>Disbursements Paid:</b>		
Release of Extension Payments #3 and #4 to Westlands Water District	60,000.00	
Release of Extension Payment #5 to Westlands Water District	30,000.00	
Release of Extension Payment to Westlands Water District	30,000.00	
Extension Payment for 01/21/2013 to Westlands Water District	30,000.00	
Release of Deposit (4/30/2013) to Westlands Water District	3,000.00	
Release of Extension Payment #7 (for 5/21/13) to Westlands Water District	100,000.00	
Release of Extension Payment #8 (for 8/21/13) to Westlands Water District	200,000.00	
Release of Extension Payment #9 (for 11/21/13) to Westlands Water District	300,000.00	
Release of Extension Payment #10 (for 2-21-14) to Westlands Water District	400,000.00	
Release of Extension Payment #11 (for 5-21-14) to Westlands Water District	400,000.00	
Add'l Extension Payment #11 (for 5-21-14) to Westlands Water District	100,000.00	
Release of Extension Payment #12 (for 8/21/14 to Westlands Water District	500,000.00	
Release of Extension Payment #13 for 11/21/14 to Westlands Water District	600,000.00	
Seller's Tax Lien - Certificate# 0303953 to Fresno County Auditor-Controller Treasurer-Tax Collector	150.77	
2nd Install. 2014/15 (028-101-70S) to Fresno County Tax Collector	16.08	
2nd Install. 2014/15 (028-101-51S) to Fresno County Tax Collector	16.08	
2nd Install. 2014/15 (028-101-53) to Fresno County Tax Collector	16.08	
2nd Install. 2014/15 (028-101-50S) to Fresno County Tax Collector	16.08	
2nd Install. 2014/15 (038-320-18S) to Fresno County Tax Collector	16.08	
2nd Install. 2014/15 (038-320-23S) to Fresno County Tax Collector	16.08	
2nd Install. 2014/15 (038-320-17) to Fresno County Tax Collector	28.26	

14-12-40



***Seller's Final Settlement Statement***

**Settlement Date:** 12/30/2014  
**Print Date:** 12/30/2014

**File No:** NCS-450237-T-SD  
**Officer:** Meg K. Kilfoil/mk

Charge Description	Seller Charge	Seller Credit
2nd Install. 2014/15 (028-101-45S) to Fresno County Tax Collector	27.39	
2nd Install. 2014/15 (028-101-46S) to Fresno County Tax Collector	16.08	
2nd Install. 2014/15 (028-101-47S) to Fresno County Tax Collector	16.08	
2nd Install. 2014/15 (028-101-48S) to Fresno County Tax Collector	16.08	
2nd Install. 2014/15 (028-101-23S) to Fresno County Tax Collector	16.08	
2nd Install. 2014/15 (028-101-22) to Fresno County Tax Collector	16.08	
Cash (X To) ( From) Seller	11,425,957.83	A
<b>Totals</b>	<b>14,258,359.13</b>	<b>14,258,359.13</b>

14-12-40

# General Ledger

## Transactions Report - Detail

### 12/1/2014 Through 12/31/2014

Transaction Per. Date	Post Date	Journal	Batch Number	Posting Units Comment	Beginning Balance	Debit	Credit	Ending Balance	Net Change
<b>GL Account Number: 15420-00-00-00-00-00 SUSPENSE - GENERAL</b>									
10	12/15/2014	JE-141213	GLGJ-0000794	0.000	68,899.50	0.00	2,478.68	66,420.82	(2,478.68)
10	12/23/2014	JE-141219	GLGJ-0000799	0.000		2,478.68	0.00	68,899.50	2,478.68
10	12/23/2014	12/23/2014 CR-755	ARCR-0000782	0.000		0.00	5,352.69	63,546.81	(5,352.69)
10	12/5/2014	12/30/2014 AP-3906	APVO-0001398	0.000		0.00	215.60	63,331.21	(215.60)
10	12/8/2014	12/30/2014 AP-3906	APVO-0001398	0.000		215.60	0.00	63,546.81	215.60
10	12/31/2014	JE-141230	GLGJ-0000804	0.000		0.00	2,478.68	61,068.13	(2,478.68)
10	12/31/2014	12/31/2014 CR-760	ARCR-0000787	0.000		0.00	11,425,957.83	(11,364,889.70)	(11,425,957.83)
<b>GL Account Number: 15420-00-00-00-00-00 SUSPENSE - GENERAL</b>					68,899.50	2,694.28	11,436,483.48	(11,364,889.70)	(11,433,789.20)
<b>Report Total:</b>						2,694.28	11,436,483.48		(11,433,789.20)

01-12-14

Return Address and Recording Requested by:

FRESNO COUNTY AUDITOR-CONTROLLER/  
TREASURER-TAX COLLECTOR  
TAX COLLECTION DIVISION  
PO BOX 1192  
FRESNO, CA 93715-1192



FRESNO County Recorder  
Robert C. Werner

**DOC- 2004-0222142**

Acct 25-Fresno Co Tax Collector

Monday, OCT 04, 2004 11:34:05

Ttl Pd \$0.00

Nbr-0001615475

APR/R1/1-1

**LIEN DATE ASSESSEE:** WESTLANDS WATER DISTRICT  
P O BOX 5056  
FRESNO CA 93703

**CERTIFICATE NO. 0303953**

CERTIFICATE OF DELINQUENCY OF  
PERSONAL PROPERTY TAX/  
UNSECURED PROPERTY TAX  
(Prepared pursuant to the California  
Revenue and Taxation Code, Sections  
2191.3 and 2191.4).

TAX INFORMATION: C3953					IF PAID BY: 08-31-04	
FISCAL YEAR	PARCEL NUMBER	NET ASSESSED VALUE	TAX DUE	PENALTY	TOTAL AMOUNT DUE	
2003 - 2004	028-071-40S 80134		25.38	27.43	52.81	
DESCRIPTION: 2003-04 ACQUISITION R & T CODE 5086					PRORATED TO 6/30/03	
TAX AREA: 111-018						

The Fresno County Auditor-Controller/Treasurer-Tax Collector hereby certifies that the assessee named above is liable to the County of Fresno for delinquent personal property tax plus penalties pursuant to the California Revenue and Taxation Code, Section 2922(a). **FURTHERMORE, PURSUANT TO THE CALIFORNIA REVENUE AND TAXATION CODE, SECTION 2922(B), BEGINNING 09-01-04 ;AN ADDITIONAL PENALTY OF ONE AND ONE HALF PERCENT PER MONTH WILL ACCRUE.** The Fresno County Auditor-Controller/Treasurer-Tax Collector also certifies that there has been compliance with all applicable provisions of the California Revenue and Taxation Code, Division 1, which pertain to the assessment, computation, and levy of the tax.

By recording this certificate the amount of the tax and penalties set forth above shall constitute a lien upon all personal and real property in Fresno County now owned by the assessee or acquired in the future by the assessee to the extent provided by the California Revenue and Taxation Code, Section 2191.4.

VICKI CROW, C.P.A.  
Auditor-Controller/Treasurer-Tax Collector

Date: OCT 01 2004

Deputy

PARCEL INFORMATION								
APN #	County	Escrow #	Seller's Name	Purchase Program	Assessable Acres	Irrigable Acres	Closing Date	Legal Description
028 101 51S	Fresno	5633444-SCF	Guenther	Peck	220.00	210.00	2/4/2005	W2 NW4 NW4 & SW4 NW4 & SW4 35 15/14
028 101 22	Fresno	5633444-SCF	Guenther	Peck	80.00	79.00	2/4/2005	W2 SW4 25 15/14
028 101 23S	Fresno	5628626-SCF	Guenther	Peck	80.00	79.00	3/15/2004	E2 SW4 Sec 25 15/14
028 101 45S	Fresno	5618464-SCF	Peck	Peck	158.16	151.00	10/3/2003	NE4 Sec 36 15/14
028 101 46S	Fresno	5618464-SCF	Peck	Peck	158.16	155.00	10/3/2003	SE4 Sec 36 15/14
028 101 47S	Fresno	5618464-SCF	Peck	Peck	160.00	157.00	10/3/2003	SW4 Sec 36 15/14
028 101 48S	Fresno	5618464-SCF	Peck	Peck	160.00	156.00	10/3/2003	NW4 Sec 36 15/14
028 101 50S	Fresno	5633446-SCF	Kriesant	Peck	160.00	160.00	12/30/2004	SE4 Sec 35 15/14
028 101 53	Fresno	5628626-SCF	Guenther	Peck	20.00	20.00	3/15/2004	W2 SE4 NW4 Sec 35 15/14
038 320 17	Fresno	5618464-SCF	Peck	Peck	161.03	156.00	10/3/2003	NW4 Sec 1 16/14
038 320 18S	Fresno	5618464-SCF	Peck	Peck	160.00	157.00	10/3/2003	SW4 Sec 1 16/14
038 320 23S	Fresno	5618464-SCF	Peck	Peck	156.82	150.00	10/3/2003	NE4 Sec 1 16/14
028 101 70SY	Fresno	5633443-SCF	Etcheberry	Peck	222.80	218.00	10/22/2004	NE4 & E 3/4 N2 NW4 35 15/14 & SE4 SE4 & S2 SE4 NE4 26 15/14

\*Note: Parcel 028 071 32s (322.44 irr ac) split 11/16/12

into 028 071 55S 123.6 acres Irr Ac = 120  
also 028 071 54S 200 acres (sold land retain w. Irr Ac = 196

\*Note: Parcel 028 101 70S (275 irr ac) split between 12/15/2014 - 1/15/15

into 028 101 70SX 58.77 acres Irr Ac = 57  
also 028 101 70SY 222.80 acres (sc Irr Ac = 218

210.00\*+  
79.00 +  
79.00 +  
151.00 +  
155.00 +  
157.00 +  
156.00 +  
160.00 +  
20.00 +  
156.00 +  
157.00 +  
150.00 +  
218.00 +  
1,848.00 \*  
Irrigable

220.00\*+  
80.00 +  
80.00 +  
159.16 +  
153.16 +  
160.00 +  
160.00 +  
160.00 +  
20.00 +  
161.03 +  
160.00 +  
150.82 +  
222.80 +  
1,896.97 \*  
Assessable

14-13-40

**To:** bormonde@westlandswater.org[bormonde@westlandswater.org]  
**Cc:** CLek@sco.ca.gov[CLek@sco.ca.gov]; ELoste@sco.ca.gov[ELoste@sco.ca.gov]  
**From:** MCheng@sco.ca.gov  
**Sent:** Mon 10/3/2016 6:44:27 PM  
**Subject:** Westlands Review

Hi Bobbie,

This is Michael, the auditor from the State Controller's Office. This is a follow-up email regarding the scheduling of an internal control review of the Westlands Water District. I CC'ed my managers.

As discussed over the phone, we might be able to start near the end of October. Let me know when we can finalize the date. We anticipate completing the fieldwork in approximately six to eight weeks.

Our review will include an analysis of the administrative and internal accounting controls and fiscal management of the district and will focus on the period of March 1, 2013, through February 28, 2015; however, if issues come to our attention, we may expand our work to include prior and/or current periods.

The review will be conducted under the Government Code section 12410 which requires the Controller to "...superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment."

Additionally, Government Code section 12891.2 grants the Controller the authority to audit the books and records of public agencies receiving loans or grants for local water projects.

Please contact me if you have any questions. We look forward to working with you.

Thanks,

**Michael Cheng, CPA**

Audit Specialist

State Controller's Office

Division of Audits - Local Government Audits Bureau

(916) 322-5235 | [mcheng@sco.ca.gov](mailto:mcheng@sco.ca.gov)

**To:** Chuck Lomeli[CALomeli@solanocounty.com]  
**Cc:** Laura Labanieh[lalabanieh@csacfinancecorp.org]  
**From:** Dave Ciapponi  
**Sent:** Tue 4/12/2016 7:09:29 PM  
**Subject:** FW: S&P Rating Letter & Report - CA, Westlands Water District  
[Westlands Water District STDLONG 797680.pdf](#)  
[Westlands Water District STDLONG AAA A-1 797680.pdf](#)  
[Westlands Water District SPUR 797680.pdf](#)  
[CA, Westlands Wtr Dist Rationale 797680.pdf](#)

Chuck and Laura,

Can't remember if I shared with you that S&P affirmed Westlands' ratings and removed from credit watch. I hear that Fitch has a six month lag so no process underway there yet. Apologize if you have seen this already.

*Dave Ciapponi*  
*Secretary*  
*Westlands Water District*  
*559.241.6202 Office*  
*[REDACTED] Cell*  
*dciapponi@westlandswater.org*

---

**From:** S&P\_USPF\_RatingLetters@standardandpoors.com [mailto:S&P\_USPF\_RatingLetters@standardandpoors.com]  
**Sent:** Tuesday, March 29, 2016 3:50 AM  
**To:** dciapponi@westlandswater.org  
**Cc:** Kawawaki, Lauren; Weil, Chloe  
**Subject:** S&P Rating Letter & Report - CA, Westlands Water District

Dear Mr. Ciapponi,

Please find attached the rating letter and report for the transaction reflected above.

Should you have any questions regarding the rating or contents of the report, please contact the primary analyst listed in the report. If you need any further assistance, please don't hesitate to contact Lauren Kawawaki at [lauren.kawawaki@standardandpoors.com](mailto:lauren.kawawaki@standardandpoors.com) or 415-371-5014

For fee inquiries or for questions regarding invoicing and pricing, please contact Fee Services at (877)-299-2569 or email them directly [here](#).

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Regards,



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# RatingsDirect®

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## Summary:

Westlands Water District, California  
San Luis & Delta-Mendota Water  
Authority; Joint Criteria; Water/Sewer

### Primary Credit Analyst:

Chloe S Weil, San Francisco (1) 415-371-5026; [chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)

### Secondary Contact:

Paul J Dyson, San Francisco (1) 415-371-5079; [paul.dyson@standardandpoors.com](mailto:paul.dyson@standardandpoors.com)

## Table Of Contents

Rationale

Outlook

Related Criteria And Research



## Summary:

# Westlands Water District, California San Luis & Delta-Mendota Water Authority; Joint Criteria; Water/Sewer

Credit Profile		
<b>Westlands Wtr Dist wtr &amp; swr</b>		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
<b>San Luis &amp; Delta-Mendota Wtr Auth, California</b>		
Westlands Wtr Dist, California		
San Luis & Delta-Mendota Wtr Auth (Westlands Wtr Dist) (BAM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

## Rationale

Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs); and
- 'A+' rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, of which Westlands Water District is the guarantor.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Securities and Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1.0x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's extraordinary accounting transaction that were the subject of the proceedings. Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as "vulnerable" and will continue to monitor the district's continuing disclosure practices. However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We believe the district's current financial position remains comparable to that of its peers at the current

rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon.

The ratings further reflect our assessment of the district's:

- Strong market position as the sole provider of irrigation water in a diverse agricultural area;
- Revised rate structure that enhances revenue stability despite significant increases in supplemental water supply costs and fluctuations in water deliveries from the U.S. Bureau of Reclamation's Central Valley Project (CVP);
- Significant progress on the decades-long dispute with the Bureau of Reclamation regarding drainage-impaired soils in the service territory, although the legal settlement remains subject to congressional approval; and
- Future challenges associated with the procurement of additional raw water sources over the long-term horizon.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The valley has been farmed with irrigation water in varying degrees for approximately half a century, and could not exist on its current scale without major water infrastructure programs such as the CVP. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable, and produces high-value permanent crops, such as almonds and pistachios, as well as tomatoes, grapes, and cantaloupes. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

Water sales and purchased water costs are the district's primary revenue sources and expenses. The main water source comes from a 1.195 million acre-foot contract entitlement with the U.S. Bureau of Reclamation's CVP. The district serves as the leading provider of imported water to the region. Supply mix can vary significantly from year to year based on CVP allocations, which are driven by hydrology. The annual safe yield of the confined underground aquifer adds another 200,000 acre-feet and local farmers generally extract as much groundwater as possible, but CVP allocations and groundwater supplies have long been inadequate to meet the region's water demand, which is approximately 1.2 million acre-feet. Accordingly, the district is continually engaged in efforts to supplement its water supply from outside sources. In recent years, the district has provided between one-half and two-thirds of all water consumed in the service area through higher-cost supplemental purchases.

As the district's financial performance is hydrology-dependent, the district performs robust financial forecasting and is proactive in maintaining relationships with other water districts and key stakeholders to ensure adequate water transfers, and to that end has been adept at securing regulatory approvals to receive supplemental water.

Weather-normalized, formal historic trend analysis is performed and updated annually for both revenue and expenses; and we believe regular efforts are made to determine whether one or more factors will cause revenues or expenses to deviate from their long-term trends over the next few years. In addition, beginning in fiscal year 2011, to help alleviate the burden on water users for the increased cost of water in short water supply years, the district's board elected to collect half of the operations & maintenance charges through a land-based charge to landowners rather than through the water rate.

On Sept. 15, 2015, the U.S. Department of Justice and Westlands approved a settlement ending a decades-long dispute over the Bureau of Reclamation's responsibility to provide drainage for the farmland within Westlands. The drainage

settlement requires Westlands to assume full responsibility for drainage management within its boundaries, and will cap CVP deliveries at 75% of the district's contract entitlement. Furthermore, Westlands will be required to retire a minimum of 100,000 acres of land and to repurpose the non-irrigated lands for environmentally friendly uses. We view the settlement as manageable as the district has already acquired 90,000 acres of land for this purpose. The district also has over \$40 million in designated reserves that could be used to meet the remaining requirements under the settlement.

The district's financial performance has been sound in our view over the past five years, despite the impact of the ongoing drought on the district's water supply. Senior lien debt service coverage (DSC) improved to 2.1x in fiscal 2015 from 1.8x in fiscal 2014, while all-in DSC, which adjusts for the district's fixed charges included in operating expenses, the district's subordinated lien obligations, and the impact of one-time land sales on revenues, improved to 1.6x from 1.2x, which we consider good. Based on unaudited results, we expect all-in DSC in fiscal 2016 to remain strong, at about 1.7x, excluding one-time land sales. Based on management's forecast, we expect all-in DSC to decline to about 1.0x in fiscal 2017, which we consider adequate at the current rating level. With a debt-to-capitalization ratio of about 55% as of February 28, 2015, we consider the district to be moderately leveraged.

The district's liquidity position is strong, in our view. The district's cash and cash equivalents as of Feb. 29, 2016 (unaudited) was \$102 million, which represented 314 days' of operating expenses. We understand that the district maintains a strong liquidity position, in part to enable it to opportunistically acquire water rights or otherwise firm up its water supply.

The proposed California WaterFix (the revised approach to the Bay Delta Conservation Plan), a comprehensive plan for the Bay-Delta to address environmental and water supply issues, if adopted and implemented, would entail substantial infrastructure investment in the Delta and implementation of other conservation measures. The capital costs associated with this project will likely be large--most recently estimated at \$14.6 billion, and the district estimates that its proportionate share would be about \$2.4 billion. However, we recognize that the method for financing the project has not been established, and the district has no obligation to fund these future costs. However, we believe that substantial increases in the district's land-based charges and CVP water rates will be necessary to cover the district's (yet to be determined) share of the planned Bay Delta improvements. Even so, we believe that the CVP water may remain the district's lowest cost source of water, and is critical to support the region's agricultural output.

## Outlook

The stable outlook reflects our view of the district's competitive position as the leading provider of supplemental water to a region with strong water demand and scarce water resources. During the two-year outlook period, we anticipate that the district will continue to sustain its good coverage metrics and extremely strong liquidity position while managing its water supply. We also expect the district to finalize its plans regarding the drainage settlement and that the district currently has ample capital funding capacity to execute the requirements under the agreement.

### Upside scenario

Although not anticipated, due to the district's service territory characteristics and potential shifts in the water supply portfolio, we may raise the ratings if the district is able to stabilize and sustain strong coverage metrics and if the local

service economy strengthens and diversifies such that its characteristics are comparable to those of peers at a higher rating level.

#### Downside scenario

We may lower the ratings if changes to the water supply portfolio or unexpected capital needs cause the district's financial metrics to materially erode.

## Related Criteria And Research

#### Related Criteria

- USPFCriteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- USPFCriteria: Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- USPFCriteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- Criteria: Use of CreditWatch And Outlooks, Sept. 14, 2009

#### Related Research

- U.S. State And Local Government Credit Conditions Forecast, Jan. 11, 2016
- U.S. Municipal Water And Sewer Utilities 2014 Sector Outlook: Learning To Do More With Less, Jan. 9, 2014

Ratings Detail (As Of March 28, 2016)		
Westlands Wtr Dist wtr & swr (AGM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
Westlands Wtr Dist (Westlands Wtr Dist) JOINT CRIT		
<i>Long Term Rating</i>	AAA/A-1	Current
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

Many issues are enhanced by bond insurance.

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of Ratings Direct at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

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March 25, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Dave Ciapponi, Assistant General Manager

Re: *Westlands Water District, California, Certificate Of Participation*

Dear Mr. Ciapponi:

Standard & Poor's Ratings Services ("Ratings Services") hereby affirms its rating of "A+" for the underlying rating (SPUR) on the above-listed obligations and removed the rating from CreditWatch. Standard & Poor's views the outlook for this rating as stable. A copy of the rationale supporting the rating and outlook is enclosed.

This letter constitutes Ratings Services' permission for you to disseminate the above rating to interested parties in accordance with applicable laws and regulations. However, permission for such dissemination (other than to professional advisors bound by appropriate confidentiality arrangements) will become effective only after we have released the rating on [standardandpoors.com](http://standardandpoors.com). Any dissemination on any Website by you or your agents shall include the full analysis for the rating, including any updates, where applicable.

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March 25, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Dave Ciapponi, Assistant General Manager

Re: *Westlands Water District, California, Certificate Of Participation*

Dear Mr. Ciapponi:

Standard & Poor's Ratings Services ("Ratings Services") hereby affirms its rating of "A+" for the above-referenced obligations and removed the rating from CreditWatch. Standard & Poor's views the outlook for this rating as stable. A copy of the rationale supporting the rating and outlook is enclosed.

This letter constitutes Ratings Services' permission for you to disseminate the above rating to interested parties in accordance with applicable laws and regulations. However, permission for such dissemination (other than to professional advisors bound by appropriate confidentiality arrangements) will become effective only after we have released the rating on [standardandpoors.com](http://standardandpoors.com). Any dissemination on any Website by you or your agents shall include the full analysis for the rating, including any updates, where applicable.

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San Francisco, CA 94111-5432  
tel 415 371-5000  
reference no.: 40225135

March 25, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Dave Ciapponi, Assistant General Manager

Re: *Westlands Water District, California, Certificate Of Participation*

Dear Mr. Ciapponi:

Standard & Poor's Ratings Services ("Ratings Services") hereby affirms its rating of "AAA/A-1" for the above-referenced obligations and removed the rating from CreditWatch. Standard & Poor's views the outlook for this rating as not meaningful. A copy of the rationale supporting the rating and outlook is enclosed.

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**To:** Philip Williams[pwilliams@westlandswater.org]  
**From:** Jon Rubin  
**Sent:** Fri 2/24/2017 6:06:06 PM  
[State Audit 2016-132 - Scope and Objectives.pdf](#)



**2016-132 AUDIT SCOPE AND OBJECTIVES**  
**California Department of Water Resources—**  
**California WaterFix Project Funding**

The audit by the California State Auditor will provide independently developed and verified information related to the sources of funds spent on planning and design of the California WaterFix Project (WaterFix) by the California Department of Water Resources (DWR), and will include, but not be limited to, the following:

1. Review and evaluate the laws, rules, and regulations significant to the audit objectives.
2. Determine how DWR collaborated to organize and fund the planning and design of the Bay Delta Conservation Plan (Delta Plan) and subsequently WaterFix. Specifically, identify the following:
  - (a) DWR's role in organizing and financing the planning and design.
  - (b) The extent to which DWR engaged local agencies required to contribute towards WaterFix costs in developing the funding structure for planning and design.
  - (c) The amounts and proportional share of contributions each local agency and any other entity that provided funds for planning and design made from 2006 to present.
  - (d) Whether the State allocated any General Fund money for planning and design.
3. Identify, by source, the amounts of funding DWR, each local agency, and any related joint powers authority raised and used to finance the Delta Plan and subsequently WaterFix. In the case of debt financing, identify the entities that issued debt and their relationships to the water contractor, and determine when and how they secured each debt issuance.
4. Determine the nature of the Conveyance Project Coordinating Agency's activities, date of its charter, its composition, and the amount of funding, by source, it has received since its inception.
5. Evaluate the process DWR used to select the contractor to manage design engineering for the Design and Construction Enterprise unit.
6. Review and assess any other issues that are significant to the audit.

**To:** 'Weil, Chloe'[chloe.weil@standardandpoors.com]  
**From:** Bobbie Ormonde  
**Sent:** Fri 3/11/2016 5:21:52 PM  
**Subject:** RE: S&P Review of Westlands Water District

Chloe,

We are in the process of gathering the data requested. As for the date of our meeting, I am awaiting availability of a few members of our team. I will get back to you today.

Bobbie Ormonde  
Director of Finance and Administration  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 93703  
(559) 241-6203

---

**From:** Weil, Chloe [mailto:chloe.weil@standardandpoors.com]  
**Sent:** Thursday, March 10, 2016 6:23 PM  
**To:** Brown, Douglas S.; Bobbie Ormonde  
**Cc:** Dyson, Paul  
**Subject:** S&P Review of Westlands Water District  
**Importance:** High

Good evening Bobbie –

As I previously indicated, we will be working on a full review of the rating on the District’s revenue bonds as a result of yesterday’s SEC enforcement action. We last conducted a full review of the District in relation to the May 2013 issuance by the San Luis & Delta–Mendota Water Authority of the series 2013A bonds.

I am attaching our rating report from 2013 as a point of reference, and I am sending an attached list of key questions for your consideration to help expedite our credit review. As you can see, the bulk of our questions relate to the accounting treatment of the adjustments made in 2010 and 2012, and making sure we understand each of the revenue items in the fiscal 2015 audit – but we are also focused on the District’s financial projections over the next five years.

We are hoping to schedule a meeting with the District (either in person or by phone) on March 18<sup>th</sup> or 21<sup>st</sup> to give us enough time to finalize the rating by March 25<sup>th</sup>. We will wait to hear from you for which date works best for the District.

Finally, I am also including a copy of our new water/sewer criteria that we released in January.

Regards,

Chloe



**Chloe Weil**  
Director, U.S. Public Finance Infrastructure Group

Standard & Poor’s Ratings Services  
One California Street, 31<sup>st</sup> Floor, San Francisco, CA 94111  
T 415.371.5026 | F 415.371.5090

[chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)  
[www.standardandpoors.com](http://www.standardandpoors.com)

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---

**From:** Brown, Douglas S. [<mailto:DBROWN@SYCR.com>]

**Sent:** Thursday, March 10, 2016 1:01 PM

**To:** Weil, Chloe (Analytical)

**Cc:** Bobbie Ormonde

**Subject:** WWD

Chloe,

Per our conversation:

Bobbie Ormonde

District Director of Finance & Administration

[bormonde@westlandswater.org](mailto:bormonde@westlandswater.org)

(559) 241-6203

**Douglas S. Brown**  
**Stradling**  
Attorneys at Law

Stradling Yocca Carlson & Rauth, P.C.  
500 Capitol Mall, Suite 1120 | Sacramento, CA 95814  
660 Newport Center Drive, Suite 1600 | Newport Beach, CA 92660  
(c) 949.500.0855

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**To:** dciapponi@westlandswater.org[dciapponi@westlandswater.org]  
**Cc:** Kawawaki, Lauren[lauren.kawawaki@standardandpoors.com]; Weil, Chloe[chloe.weil@standardandpoors.com]  
**From:** S&P\_USPF\_RatingLetters@standardandpoors.com  
**Sent:** Tue 3/29/2016 10:49:37 AM  
**Subject:** S&P Rating Letter & Report - CA, Westlands Water District  
[Westlands Water District STDLONG 797680.pdf](#)  
[Westlands Water District STDLONG AAA A-1 797680.pdf](#)  
[Westlands Water District SPUR 797680.pdf](#)  
[CA, Westlands Wtr Dist Rationale 797680.pdf](#)

Dear Mr. Ciapponi,

Please find attached the rating letter and report for the transaction reflected above.

Should you have any questions regarding the rating or contents of the report, please contact the primary analyst listed in the report. If you need any further assistance, please don't hesitate to contact Lauren Kawawaki at [lauren.kawawaki@standardandpoors.com](mailto:lauren.kawawaki@standardandpoors.com) or 415-371-5014

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March 25, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Dave Ciapponi, Assistant General Manager

Re: *Westlands Water District, California, Certificate Of Participation*

Dear Mr. Ciapponi:

Standard & Poor's Ratings Services ("Ratings Services") hereby affirms its rating of "A+" for the above-referenced obligations and removed the rating from CreditWatch. Standard & Poor's views the outlook for this rating as stable. A copy of the rationale supporting the rating and outlook is enclosed.

This letter constitutes Ratings Services' permission for you to disseminate the above rating to interested parties in accordance with applicable laws and regulations. However, permission for such dissemination (other than to professional advisors bound by appropriate confidentiality arrangements) will become effective only after we have released the rating on [standardandpoors.com](http://standardandpoors.com). Any dissemination on any Website by you or your agents shall include the full analysis for the rating, including any updates, where applicable.

To maintain the rating, Standard & Poor's must receive all relevant financial and other information, including notice of material changes to financial and other information provided to us and in relevant documents, as soon as such information is available. Relevant financial and other information includes, but is not limited to, information about direct bank loans and debt and debt-like instruments issued to, or entered into with, financial institutions, insurance companies and/or other entities, whether or not disclosure of such information would be required under S.E.C. Rule 15c2-12. You understand that Ratings Services relies on you and your agents and advisors for the accuracy, timeliness and completeness of the information submitted in connection with the rating and the continued flow of material information as part of the surveillance process. Please send all information via electronic delivery to [pubfin\\_statelocalgovt@standardandpoors.com](mailto:pubfin_statelocalgovt@standardandpoors.com). If SEC rule 17g-5 is applicable, you may post such information on the appropriate website. For any information not available in electronic format or posted on the applicable website,

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Public Finance Department

55 Water Street  
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Sincerely yours,

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One California Street, 31st Floor  
San Francisco, CA 94111-5432  
tel 415 371-5000  
reference no.: 40225135

March 25, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Dave Ciapponi, Assistant General Manager

Re: *Westlands Water District, California, Certificate Of Participation*

Dear Mr. Ciapponi:

Standard & Poor's Ratings Services ("Ratings Services") hereby affirms its rating of "AAA/A-1" for the above-referenced obligations and removed the rating from CreditWatch. Standard & Poor's views the outlook for this rating as not meaningful. A copy of the rationale supporting the rating and outlook is enclosed.

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March 25, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Dave Ciapponi, Assistant General Manager

Re: *Westlands Water District, California, Certificate Of Participation*

Dear Mr. Ciapponi:

Standard & Poor's Ratings Services ("Ratings Services") hereby affirms its rating of "A+" for the underlying rating (SPUR) on the above-listed obligations and removed the rating from CreditWatch. Standard & Poor's views the outlook for this rating as stable. A copy of the rationale supporting the rating and outlook is enclosed.

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## Summary:

Westlands Water District, California  
San Luis & Delta-Mendota Water  
Authority; Joint Criteria; Water/Sewer

### Primary Credit Analyst:

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Rationale

Outlook

Related Criteria And Research

## Summary:

# Westlands Water District, California San Luis & Delta-Mendota Water Authority; Joint Criteria; Water/Sewer

Credit Profile		
<b>Westlands Wtr Dist wtr &amp; swr</b>		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
<b>San Luis &amp; Delta-Mendota Wtr Auth, California</b>		
Westlands Wtr Dist, California		
San Luis & Delta-Mendota Wtr Auth (Westlands Wtr Dist) (BAM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

## Rationale

Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs); and
- 'A+' rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, of which Westlands Water District is the guarantor.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Securities Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1.0x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's extraordinary accounting transaction that were the subject of the proceedings. Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as "vulnerable" and will continue to monitor the district's continuing disclosure practices. However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We believe the district's current financial position remains comparable to that of its peers at the current

rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon.

The ratings further reflect our assessment of the district's:

- Strong market position as the sole provider of irrigation water in a diverse agricultural area;
- Revised rate structure that enhances revenue stability despite significant increases in supplemental water supply costs and fluctuations in water deliveries from the U.S. Bureau of Reclamation's Central Valley Project (CVP);
- Significant progress on the decades-long dispute with the Bureau of Reclamation regarding drainage-impaired soils in the service territory, although the legal settlement remains subject to congressional approval; and
- Future challenges associated with the procurement of additional raw water sources over the long-term horizon.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The valley has been farmed with irrigation water in varying degrees for approximately half a century, and could not exist on its current scale without major water infrastructure programs such as the CVP. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable, and produces high-value permanent crops, such as almonds and pistachios, as well as tomatoes, grapes, and cantaloupes. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

Water sales and purchased water costs are the district's primary revenue sources and expenses. The main water source comes from a 1.195 million acre-foot contract entitlement with the U.S. Bureau of Reclamation's CVP. The district serves as the leading provider of imported water to the region. Supply mix can vary significantly from year to year based on CVP allocations, which are driven by hydrology. The annual safe yield of the confined underground aquifer adds another 200,000 acre-feet and local farmers generally extract as much groundwater as possible, but CVP allocations and groundwater supplies have long been inadequate to meet the region's water demand, which is approximately 1.2 million acre-feet. Accordingly, the district is continually engaged in efforts to supplement its water supply from outside sources. In recent years, the district has provided between one-half and two-thirds of all water consumed in the service area through higher-cost supplemental purchases.

As the district's financial performance is hydrology-dependent, the district performs robust financial forecasting and is proactive in maintaining relationships with other water districts and key stakeholders to ensure adequate water transfers, and to that end has been adept at securing regulatory approvals to receive supplemental water.

Weather-normalized, formal historic trend analysis is performed and updated annually for both revenue and expenses; and we believe regular efforts are made to determine whether one or more factors will cause revenues or expenses to deviate from their long-term trends over the next few years. In addition, beginning in fiscal year 2011, to help alleviate the burden on water users for the increased cost of water in short water supply years, the district's board elected to collect half of the operations & maintenance charges through a land-based charge to landowners rather than through the water rate.

On Sept. 15, 2015, the U.S. Department of Justice and Westlands approved a settlement ending a decades-long dispute over the Bureau of Reclamation's responsibility to provide drainage for the farmland within Westlands. The drainage

settlement requires Westlands to assume full responsibility for drainage management within its boundaries, and will cap CVP deliveries at 75% of the district's contract entitlement. Furthermore, Westlands will be required to retire a minimum of 100,000 acres of land and to repurpose the non-irrigated lands for environmentally friendly uses. We view the settlement as manageable as the district has already acquired 90,000 acres of land for this purpose. The district also has over \$40 million in designated reserves that could be used to meet the remaining requirements under the settlement.

The district's financial performance has been sound in our view over the past five years, despite the impact of the ongoing drought on the district's water supply. Senior lien debt service coverage (DSC) improved to 2.1x in fiscal 2015 from 1.8x in fiscal 2014, while all-in DSC, which adjusts for the district's fixed charges included in operating expenses, the district's subordinated lien obligations, and the impact of one-time land sales on revenues, improved to 1.6x from 1.2x, which we consider good. Based on unaudited results, we expect all-in DSC in fiscal 2016 to remain strong, at about 1.7x, excluding one-time land sales. Based on management's forecast, we expect all-in DSC to decline to about 1.0x in fiscal 2017, which we consider adequate at the current rating level. With a debt-to-capitalization ratio of about 55% as of February 28, 2015, we consider the district to be moderately leveraged.

The district's liquidity position is strong, in our view. The district's cash and cash equivalents as of Feb. 29, 2016 (unaudited) was \$102 million, which represented 314 days' of operating expenses. We understand that the district maintains a strong liquidity position, in part to enable it to opportunistically acquire water rights or otherwise firm up its water supply.

The proposed California WaterFix (the revised approach to the Bay Delta Conservation Plan), a comprehensive plan for the Bay-Delta to address environmental and water supply issues, if adopted and implemented, would entail substantial infrastructure investment in the Delta and implementation of other conservation measures. The capital costs associated with this project will likely be large--most recently estimated at \$14.6 billion, and the district estimates that its proportionate share would be about \$2.4 billion. However, we recognize that the method for financing the project has not been established, and the district has no obligation to fund these future costs. However, we believe that substantial increases in the district's land-based charges and CVP water rates will be necessary to cover the district's (yet to be determined) share of the planned Bay Delta improvements. Even so, we believe that the CVP water may remain the district's lowest cost source of water, and is critical to support the region's agricultural output.

## Outlook

The stable outlook reflects our view of the district's competitive position as the leading provider of supplemental water to a region with strong water demand and scarce water resources. During the two-year outlook period, we anticipate that the district will continue to sustain its good coverage metrics and extremely strong liquidity position while managing its water supply. We also expect the district to finalize its plans regarding the drainage settlement and that the district currently has ample capital funding capacity to execute the requirements under the agreement.

### Upside scenario

Although not anticipated, due to the district's service territory characteristics and potential shifts in the water supply portfolio, we may raise the ratings if the district is able to stabilize and sustain strong coverage metrics and if the local

service economy strengthens and diversifies such that its characteristics are comparable to those of peers at a higher rating level.

#### Downside scenario

We may lower the ratings if changes to the water supply portfolio or unexpected capital needs cause the district's financial metrics to materially erode.

## Related Criteria And Research

#### Related Criteria

- USPFCriteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- USPFCriteria: Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- USPFCriteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- Criteria: Use of CreditWatch And Outlooks, Sept. 14, 2009

#### Related Research

- U.S. State And Local Government Credit Conditions Forecast, Jan. 11, 2016
- U.S. Municipal Water And Sewer Utilities 2014 Sector Outlook: Learning To Do More With Less, Jan. 9, 2014

Ratings Detail (As Of March 28, 2016)		
Westlands Wtr Dist wtr & swr (AGM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
Westlands Wtr Dist (Westlands Wtr Dist) JOINT CRIT		
<i>Long Term Rating</i>	AAA/A-1	Current
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

Many issues are enhanced by bond insurance.

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of Ratings Direct at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

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**To:** (jcarter@westlandswater.org)[jcarter@westlandswater.org]  
**From:** Jasdeep Singh  
**Sent:** Wed 7/13/2016 3:33:56 PM  
**Subject:** FW: Press Release and Supporting Doc to be Posted to the Website  
[Press Release.Fitch Removes WWDs Negative Watch Rating.FINAL.07.12.16.pdf](#)  
[Final release WWD\(CA\) July 2016.pdf](#)

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**From:** Gayle Holman [mailto:gholman@westlandswater.org]  
**Sent:** Tuesday, July 12, 2016 7:51 PM  
**To:** 'Jim Carter'; Jasdeep Singh  
**Cc:** 'Johnny Amaral'; 'Dan Pope'  
**Subject:** Press Release and Supporting Doc to be Posted to the Website

Hi Jim/Jas:

Tomorrow morning, please post the following press release along with supporting pdf FitchRatings document to the website:

<http://wwd.ca.gov/news-and-reports/media-center/>

News Releases  
2016

07/12/2016 – Press Release

Fitch Removes Westlands' Negative Watch Rating

FitchRatings Document – July 2016 {This should be a hyperlink to the actual FitchRatings doc -

<https://www.fitchratings.com/site/pressrelease?id=1008779>

I will be offsite for most of the morning, but will check email and advise if you have any questions.

Thank you,

Gayle

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## **FITCH REMOVES WESTLANDS WATER DISTRICT, CA WATER REVS FROM NEGATIVE WATCH; OUTLOOK TO NEGATIVE**

Fitch Ratings-Austin-12 July 2016: Fitch Ratings has affirmed the ratings on and removed from Ratings Watch Negative the following underlying ratings of the Westlands Water District, California (Westlands or the district):

--\$97.3 million revenue certificates of participation (COPs), series 2005A, 2007A, 2007B and 2008A, at 'AA-';

--\$22.1 million revenue COPs series 2008A (bank bonds) at 'AA-';

--\$74.2 million revenue refunding bonds series 2012A at 'AA-'.

In addition, Fitch has affirmed the ratings on and removed the Rating Watch Negative on the following San Luis & Delta Mendota Water Authority, CA (SLDMWA) bonds:

--\$29.8 million refunding revenue bonds (Delta Habitat Conservation and Conveyance Project), series 2013A, at 'AA-'.

The Rating Outlook is Negative.

### **KEY RATING DRIVERS**

**NEGATIVE WATCH REMOVED:** Fitch has removed the district's ratings from Negative Watch because it believes the actions taken by the Securities and Exchange Commission and the district mitigate the risk of future misrepresentations and omissions by the district relating to district financial results. Further, board adopted fixed-land based charges mitigate the risk of future revenue volatility.

**NEGATIVE OUTLOOK:** The Negative Rating Outlook is due to the potential for significant leveraging and additional drainage management responsibilities that would be assumed by the district following authorization of a drainage settlement (drainage settlement) with the United States. Authorization of the drainage settlement is pending U.S. Congressional approval.

**LARGEST WATER DISTRICT IN THE NATION:** Westlands is the largest water district by acreage in the nation, encompassing 614,700 acres in Fresno and Kings Counties in the San Joaquin Valley serving mostly agricultural irrigation needs. The district serves a highly concentrated agricultural user base that produces crops valued around \$1.5 billion annually.

**LOW ALLOCATIONS LEAD TO HIGHER COSTS:** Although the district has ample water entitlements [1.19 million acre feet (af) to serve regional irrigation need]), allocations of Central Valley Project (CVP) water can vary widely from year to year, driven by hydrology and environmental regulations. Unfavorably for the district, CVP allocations have been 5% or less annually since 2014, forcing the district to purchase more costly supplies elsewhere for its customers.

**SOUND FINANCIAL POSITION:** The district's financial position is generally stable following the adoption of fixed-rate land based charges in fiscal 2011. DSC on senior lien debt has been 1.6x

or higher since 2011. District cash balances have continued to climb, growing to over \$140 million for fiscal 2015, up from just \$40 million in fiscal 2010.

**WESTLANDS GUARANTY ON SLDMWA BONDS:** The rating on SLDMWA bonds reflects Westlands' obligation to pay 100% of debt service to the trustee. Westlands' is entitled to subsequent repayment from the other eight districts, which makes up about 20%, or approximate \$8 million, of the total obligation. SLDMWA obligation is paid as an operating expense by Westlands.

## **RATING SENSITIVITIES**

**ADDITIONAL LEVERAGE WITH DRAINAGE SETTLEMENT:** The rating would likely be downgraded if the U.S. Congress approves the drainage settlement with Westlands Water District due to significant debt likely to be required as part of the settlement, which could ultimately pressure the district's financial performance. If the drainage settlement agreement is not authorized, the Outlook would likely be moved to Stable based on the district's existing credit profile.

**LEVERAGE ON BEHALF OTHERS:** Additional debt taken on by the district on behalf of other agencies, such as the San Luis & Delta Mendota Water Authority, could further pressure district finances and lead to a rating downgrade.

## **CREDIT PROFILE**

### **RATING WATCH NEGATIVE REMOVED**

Following further discussions with the district, Fitch believes that the accounting reclassifications utilized in fiscal 2010 to meet the 1.25x rate covenant were isolated to that reporting period. Additionally, the board's adoption of a formal written policy for disclosure procedures coupled with the staff training related to disclosure procedures and responsibilities required under federal law are indicative of the district board and management's undertaking to provide more transparent financial disclosure going forward. Removal of the Rating Watch Negative is further supported by Fitch's belief that the adoption of fixed-rate land based charges starting in fiscal year 2011 help to mitigate the risk of future revenue volatility resulting from reduced CVP water allocations.

### **DRAINAGE SETTLEMENT COULD PRESSURE DISTRICT**

In September of 2015 the district entered into a settlement with the U.S. to resolve decades of litigation surrounding drainage issues within the district brought on by the district and various district landowners. The settlement, which has been signed by the U.S. and the district, still requires Congressional authorization. Fitch views favorably the district's receipt of a permanent water contract (albeit with a reduced delivery entitlement) and relief from \$295 million (present value) in obligations to the U.S. However, Fitch is concerned with the additional responsibilities taken on by the district for drainage management and the related costs and liability that could be incurred.

Low end estimates of costs associated with the drainage settlement are approximately \$400 million, which is double the current debt outstanding of the district and its obligation to repay bonds on behalf of the SLDMWA. High end estimates are closer to \$800 million, or four times the district's current outstanding obligations. The district is also required to permanently retire 100,000 acres of land (reducing the irrigable acreage by 17%) and compensate farmers in drainage affected parts of the district. The district currently owns about 90,000 acres of land and would look purchase or obtain non-irrigation covenants on the additional 10,000 acres. The district has about \$50 million set aside in a land and water reserve fund which could be used to offset the costs

related to the immediate implementation of some of the drainage settlement requirements, but would likely have to debt finance additional costs associated with completing the requirements.

## LARGE, UNIQUE IRRIGATION DISTRICT

Westlands is governed by a nine-member board of directors elected from district land owners and is responsible for district governance and policies. The district maintains full independent rate-setting authority as well as the ability to place a lien on property if water bills are unpaid. The district covers 614,700 acres in Fresno and Kings County on the west side of the San Joaquin Valley of which about 568,000 is irrigable. It is the largest irrigation district in the U.S. by acreage and responsible for administering the delivery of water from the United States Bureau of Reclamation (USBR) CVP.

## CONCENTRATION OF AGRICULTURAL CUSTOMERS

The district serves a small concentrated customer base comprised of approximately 700 connections for agricultural irrigation service and another 200 municipal and industrial connections. Irrigation water sales accounted for 80% of the district's operating revenues, land based charges 17% and municipal and industrial revenues accounted for just over 2% of operating revenues in fiscal 2015. Offsetting the ratepayer concentration risk somewhat is the high value of the cash crops farmed in the district (about \$2 billion in calendar 2015).

## 2015 FINANCIAL RESULTS BOOSTED BY LAND SALES

Financial results for fiscal 2015 were strong, boosted by \$22 million in additional non-operating revenues from the sale of land. Senior lien and all-in DSC, including land sale proceeds were 3.6x and 2.6x, respectively. Without the land sale proceeds, DSC would have still been healthy at 2.1x and 1.7x, respectively. The district budgets to achieve 1.25x DSC on senior lien debt and its rates are designed to cover the cost of water plus some operational expenses of the district. Management provided forecasts project senior lien DSC of 2.3x in fiscal 2016 supported by an additional \$6 million in land sales, before dropping to 1.4x for fiscals 2017 - 2020. Forecasts assume rates based on 0% CVP water allocations.

District cash continued an upward trend. Cash balances registered \$140 million in fiscal year 2015, up sharply from \$40 million in fiscal year 2010. Cash balances would likely decline somewhat when the drainage settlement is authorized as the district indicated utilizing some reserves to complete drainage settlement requirements.

## LOW CVP ALLOCATIONS RESULT IN HIGHER COST

District water is purchased from the USBR's CVP project and sold to users at prices designed to cover cost. CVP allocations have been minimal the last several years, with with 0% CVP allocation in 2014 and 2015 and just 5% in 2016. When allocations are low the district is forced to purchase supplemental water on the open market which can be costly.

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#### Applicable Criteria

Revenue-Supported Rating Criteria (pub. 16 Jun 2014)

[https://www.fitchratings.com/creditdesk/reports/report\\_frame.cfm?rpt\\_id=750012](https://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=750012)

U.S. Water and Sewer Revenue Bond Rating Criteria (pub. 03 Sep 2015)

[https://www.fitchratings.com/creditdesk/reports/report\\_frame.cfm?rpt\\_id=869223](https://www.fitchratings.com/creditdesk/reports/report_frame.cfm?rpt_id=869223)

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## Westlands Water District

3130 N. Fresno Street, P.O. Box 6056, Fresno, California 93703-6056, (559) 224-1523, FAX (559) 241-6277

### PRESS RELEASE

July 12, 2016

### For Immediate Release

**Contact:** Gayle Holman  
(559) 241-6233  
Westlands Water District

## Fitch Removes Westlands Water District's Negative Watch Rating

**FRESNO, CA** – We are pleased with Fitch's decision to affirm the rating of AA- and remove the negative watch rating based on the actions the District has taken to insure proper reporting in the future. The revised rating follows similar action by Standard & Poor's Rating Services which also removed its CreditWatch rating and affirmed its 'A+' long-term rating for Westlands Water District.

As a result of its analysis, Fitch also issued a negative outlook rating over additional drainage responsibility that Westlands will be required to manage under the drainage settlement reached between Westlands Water District and the United States Government. Westlands Water District looks forward to the enactment of the drainage legislation pending in Congress and to working with farmers and the Department of Interior to implement a program that fulfills the obligations contained within the agreement.

###

FitchRatings document is below and available here:

<https://www.fitchratings.com/site/pressrelease?id=1008779>

**To:** 'bormonde@westlandswater.org'[bormonde@westlandswater.org]  
**Cc:** Moore-Young, Cheryl[cheryl.moore-young@spglobal.com]; Weil, Chloe[chloe.weil@spglobal.com]; 'rporr@fieldman.com'[rporr@fieldman.com]; 'tbirmingham@westlandswater.org'[tbirmingham@westlandswater.org]  
**From:** S&P\_USPF\_RatingLetters@spglobal.com  
**Sent:** Tue 10/18/2016 1:31:18 PM  
**Subject:** S&P Rating Letter & Report - Westlands Water District  
[CA Westlands Wtr Dist Lev2 814796.pdf](#)  
[Westlands Water District STDLONG Series 2016A 814796.pdf](#)

Dear Mr. Ormonde,

Please find attached the rating letter and report for the transaction reflected above.

Should you have any questions regarding the rating or contents of the report, please contact the primary analyst listed in the report. If you need any further assistance, please don't hesitate to contact Cheryl Moore-Young at [cheryl.moore-young@spglobal.com](mailto:cheryl.moore-young@spglobal.com) or +214-765-5866.

For fee inquiries or for questions regarding invoicing and pricing, please contact Fee Services at (877)-299-2569 or email them directly [here](#).

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One California Street, 31st Floor  
San Francisco, CA 94111-5432  
tel 415 371-5000  
reference no.: 1458758

October 14, 2016

Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703  
Attention: Mr. Bobbie Ormonde, Director of Finance and Administration

**Re: *US\$50,520,000 Westlands Water District, California, Refunding Revenue Bonds, Series 2016A, dated: Date of delivery, due: September 01, 2036***

Dear Mr. Ormonde:

Pursuant to your request for an S&P Global Ratings rating on the above-referenced obligations, S&P Global Ratings has assigned a rating of "A+". S&P Global Ratings views the outlook for this rating as stable. A copy of the rationale supporting the rating is enclosed.

This letter constitutes S&P Global Ratings' permission for you to disseminate the above-assigned ratings to interested parties in accordance with applicable laws and regulations. However, permission for such dissemination (other than to professional advisors bound by appropriate confidentiality arrangements) will become effective only after we have released the rating on [standardandpoors.com](http://standardandpoors.com). Any dissemination on any Website by you or your agents shall include the full analysis for the rating, including any updates, where applicable.

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Please send hard copies to:  
S&P Global Ratings  
Public Finance Department  
55 Water Street

New York, NY 10041-0003

The rating is subject to the Terms and Conditions, if any, attached to the Engagement Letter applicable to the rating. In the absence of such Engagement Letter and Terms and Conditions, the rating is subject to the attached Terms and Conditions. The applicable Terms and Conditions are incorporated herein by reference.

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Sincerely yours,

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mc  
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cc: Mr. Robert A. Porr  
Mr. Thomas W. Birmingham



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## Summary:

### Westlands Water District, California; Joint Criteria; Water/Sewer

#### **Primary Credit Analyst:**

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Paul J Dyson, San Francisco (1) 415-371-5079; [paul.dyson@spglobal.com](mailto:paul.dyson@spglobal.com)

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Rationale

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## Summary:

# Westlands Water District, California; Joint Criteria; Water/Sewer

Credit Profile		
US\$50.52mil rfdg rev bnds ser 2016A due 09/01/2036		
LongTermRating	A+/Stable	New
WestlandsWtr Dist wtr & swr (AGM)		
UnenhancedRating	A+(SPUR)/Stable	Affirmed
Westlands Wtr Dist wtr & swr		
UnenhancedRating	A+(SPUR)/Stable	Affirmed

## Rationale

S&P Global Rating assigned its 'A+' long-term rating to the Westlands Water District, Calif.'s Refunding Revenue Bonds, Series, Calif.'s refunding revenue bonds, series 2016A. At the same time, S&P Global affirmed its:

- 'A+' rating on the district's outstanding revenue bonds and certificates of participation (COPs);
- 'AA/A-1' joint support rating on the district's series 2008A adjustable rate refunding revenue COPs--the long-term component of the series 2008A bond rating reflects the combination of the district's creditworthiness and credit enhancement in the form of a letter of credit (LOC) provided by Rabobank N.A.; and
- 'A+' rating on San Luis & Delta-Mendota Water Authority, Calif.'s (SLDMWA) series 2013A refunding revenue bonds and series 2009A revenue notes, of which the district is the guarantor.

The outlook on all ratings is stable.

The long-term rating reflects on the district's bonds, in our opinion, the combination of a strong enterprise risk profile and a very strong financial risk profile.

The series 2016A bonds are being issued to provide funds to refund all of the currently outstanding series 2005A and series 2007A bonds for debt service savings. In addition, the district expects to use approximately \$50 million of its previously collected funds from land sale to prepay a portion of the series 2005A bonds and cash to defease a portion of the series 2012A bonds. The district will also refund its outstanding series 2008A adjustable rate refunding revenue COPs and terminate the associated interest rate swap with proceeds of the series 2016A bonds.

The enterprise risk profile reflects our view of the district's:

- Strong market position as the sole provider of irrigation water in a diverse agricultural area;
- Rate structure that collects half of the district's operations and maintenance expense through water rates and half through land-based charges, which enhances revenue stability;
- Significant progress on the decades-long dispute with the U.S. Bureau of Reclamation regarding drainage-impaired soils in Westland's service territory, although the legal settlement remains subject to congressional approval; and

- Strong and comprehensive operational management practices, which provide near-term water supply reliability, although we believe that future challenges exist and are associated with the procurement of additional water supplies over the long-term horizon.

The financial risk profile reflects our view of the district's:

- Very strong recent debt service coverage (DSC) and cash position, despite significant increases in supplemental water supply costs and fluctuations in water deliveries from the U.S. Bureau of Reclamation's Central Valley Project (CVP) due to multiple years of drought;
- Proactive efforts to lower its outstanding debt service costs by retiring bonds without a material draw on its available cash balances, such as the September 2015 defeasance of \$16.2 million of series 2005A bonds;
- Plans to further de-risk the debt portfolio through the refunding of the series 2008A COPs and the termination of the associated interest swap; and
- Sound financial management practices and policies.

We view the bond provisions as adequate. The bonds are secured by the net revenues of the district's water system. Following the transaction, the 2016 bonds will be on parity with the district's 2007B certificates of participation (COPs), series 2012A bonds, and certain state revolving fund loans. Covenants include a 1.25x rate covenant and additional bond test.

Following the transaction, the district's outstanding debt will decline from \$164.2 million to approximately \$105.9 million, and there will be no variable rate debt outstanding. The district is also guarantor on \$29.3 million of outstanding series 2013A and 2009A SLDMWA bonds and notes, as of September 30, 2016. The SLDMWA obligations are considered an operating and maintenance (O&M) expense of the district, and debt service on the SLDMWA obligations is not a parity obligation of the district.

### Enterprise risk

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The valley has been farmed with irrigation water in varying degrees for approximately half a century, and could not exist on its current scale without major water infrastructure programs such as the CVP. The district's principal source of water is the CVP, operated by the Bureau of Reclamation.

The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 565,000 acres are irrigable, and produces high-value permanent crops, such as almonds and pistachios, as well as tomatoes, grapes, and cantaloupes. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

Water sales and purchased water costs are the district's primary revenue sources and expenses. The main water source comes from a 1.195 million acre-foot contract entitlement with the U.S. Bureau of Reclamation's CVP. The district serves as the leading provider of imported water to the region. Supply mix can vary significantly from year to year based on CVP allocations, which are driven by hydrology. The district generally does not pump groundwater for resale. The district estimates, however, that groundwater pumping by landowners and water users within the district since 1993 has ranged from 14,000 acre feet to 660,000 acre feet per year. The annual safe yield of the confined

underground aquifer is estimated to be 225,000 acre-feet.

While local farmers generally extract as much groundwater as possible, CVP allocations and groundwater supplies have long been inadequate to meet the region's water demand, which is approximately 1.2 million acre-feet. Accordingly, the district is continually engaged in efforts to supplement its water supply from outside sources through exchanges and multi-year purchase agreements. In addition, the district is also considering participating in storage and water banking projects to help shore up its future supplies.

Supplemental surface water acquired by the district in fiscal 2016 was approximately 130,000 acre feet. Supplemental surface water being acquired by the district in 2017 is projected to be approximately 130,000 acre feet. In recent years, the district has provided between one-half and two-thirds of all water consumed in the service area through higher-cost supplemental purchases. The district expects to continue to pursue multi-year purchase agreements for supplemental water projects. Beginning in fiscal year 2011, the district's board elected to collect half of the operations & maintenance charges through a land-based charge to landowners rather than through the water rate. Even with the increased cost of water in short water supply years, we believe this collection mechanism provides greater certainty that the district's financial metrics will remain sound, despite shifts in year-to-year water sales and supply sources.

On Sept. 15, 2015, the U.S. Department of Justice and Westlands approved a settlement ending a decades-long dispute over the Bureau of Reclamation's responsibility to provide drainage for the farmland within Westlands' service territory. The drainage settlement requires Westlands to assume full responsibility for drainage management within its boundaries, and will cap CVP deliveries at 75% of the district's contract entitlement. Furthermore, Westlands will be required to retire a minimum of 100,000 acres of land and to repurpose the non-irrigated lands for environmentally friendly uses; the district has already acquired 92,500 acres of land for this purpose.

#### Financial risk

Our assessment of the district's financial risk profile as very strong reflects the district's all-in coverage levels that we believe will be largely sustainable over the next three years, a robust liquidity position that we anticipate will be maintained over time, as well as a good financial management framework.

The district's financial performance has been sound in our view over the past five years, despite the impact of the ongoing drought on the district's water supply. The district achieved extremely strong senior lien debt service coverage (DSC) of 2.7x in fiscal 2016 (unaudited), compared to 3.5x in fiscal 2015, while all-in DSC which adjusts for the district's fixed charges included in operating expenses and the district's subordinated lien obligations, was 2.0x in fiscal 2016 (unaudited), compared to 2.6x in fiscal 2015 as calculated by S&P Global, which we also consider extremely strong. Based on management's forecast, which we view to be conservative, senior lien coverage is expected to be 1.6x and all-in DSC to decline to about 1.2x in fiscal 2017, which we consider adequate at the district's current rating level. With a debt-to-capitalization ratio of about 50% as of fiscal 2016, we view the district to be moderately leveraged.

The district's liquidity position is very strong, in our view. The district's cash and cash equivalents as of Feb. 29, 2016 was \$102 million, which represented 314 days' of operating expenses. The prepayment of debt in the series 2016 transaction will not result in a draw down in available cash as the prepayment will be funded with proceeds from recent land sales, which are accounted for separately from the district's working capital. We understand that the



district maintains a strong liquidity position in part to enable it to opportunistically acquire water rights or otherwise firm up its water supply.

As the district's financial performance is hydrology-dependent, the district performs robust financial forecasting and is proactive in maintaining relationships with other water districts and key stakeholders to ensure adequate water transfers, and to that end has been adept at securing regulatory approvals to receive supplemental water.

Weather-normalized, formal historic trend analysis is performed and updated annually for both revenue and expenses; and we believe regular efforts are made to determine whether one or more factors will cause revenues or expenses to deviate from their long-term trends over the next few years.

The district maintains a 10-year capital improvement plan, which is largely focused on repairs and replacements as well as the development of new supplies, such as potential agreements with regional municipalities and food processors to develop reclaimed water sources. As the district budgets for several million dollars of capital projects each year, we expect upcoming capital improvements to be funded through future net revenues and without a drawdown in cash reserves.

Beyond its own modest near-term capital needs, we believe the district has significant exposure to water quality and other regulatory costs, which will likely require additional bonding. In particular, upon Congressional approval of the drainage settlement, we understand the district would be required to satisfy certain requirements, including damages to existing landholders, within one year. The district currently estimates that the cost of such activities will total about \$185 million, which would likely be financed with new debt.

In addition, while not expected to be funded over the two-year rating outlook period, the proposed California WaterFix (the revised approach to the Bay Delta Conservation Plan), a comprehensive plan for the Bay-Delta to address environmental and water supply issues, if adopted and implemented, would entail substantial infrastructure investment in the Delta and implementation of other conservation measures. The capital costs associated with this project will likely be large--most recently estimated at \$14.6 billion, and the district estimates that its proportionate share would be about \$2.4 billion. We recognize that the method for financing the project has not been established, and the district has no obligation to fund these future costs. Nonetheless, we believe that substantial increases in the district's land-based charges and CVP water rates will be necessary to cover the district's (yet to be determined) share of the planned Bay Delta improvements. Even so, we believe that the CVP water may remain the district's lowest cost source of water, and is critical to support the region's agricultural output.

## Outlook

The stable outlook reflects our view of the district's competitive position as the leading provider of supplemental water to a region with strong water demand and scarce water resources. During the two-year outlook period, we anticipate that the district will continue to sustain its sound coverage metrics and very strong liquidity position while managing its water supply. We also expect the district to finalize its plans regarding the drainage settlement following a determination from Congress.

## Upside scenario

Although not anticipated, due to the district's predominantly agricultural-baseservice territory and the potential for significant increases in the district's water supply costs, we may raise the ratings if the district is able to stabilize and sustain strong coverage metrics, while reducing regulatory risk and leverage.

## Downside scenario

We may lower the ratings if changes to the water supply portfolio or unexpected capital needs cause the district's financial metrics to materially erode.

Ratings Detail (As Of October 17, 2016)		
WestlandsWtr Dist (WestlandsWtr Dist) JOINTCRIT		
LongTermRating	AA+/A-1	Affirmed
UnenhancedRating	A+(SPUR)/Stable	Affirmed
Westlands Wtr Dist Wtr & Swr rev certs of part		
UnenhancedRating	A+(SPUR)/Stable	Affirmed
San Luis & Delta-Mendota Wtr Auth, California		
WestlandsWtr Dist, California		
San Luis & Delta-Mendota Wtr Auth (WestlandsWtr Dist) (BAM)		
UnenhancedRating	A+(SPUR)/Stable	Affirmed

Many issues are enhanced by bond insurance.

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of Ratings Direct at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on the S&P Global Ratings' public website at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

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**To:** Bobbie Ormonde[bormonde@westlandswater.org]  
**From:** Weil, Chloe  
**Sent:** Tue 3/15/2016 5:53:32 PM  
**Subject:** RE: S&P Review of Westlands Water District

Thank you Bobbie. Looking forward to meeting you on Friday.

Chloe Weil  
Standard and Poor's  
415-371-5026

-----Original Message-----

From: Bobbie Ormonde [mailto:bormonde@westlandswater.org]  
Sent: Tuesday, March 15, 2016 10:41 AM  
To: Weil, Chloe (Analytical)  
Subject: Re: S&P Review of Westlands Water District

Chloe,  
Our team will include Thomas W. Birmingham, Dan Pope, Doug Brown, Dave Houston and myself. If checking identification, my first name is Balbina. I go by Bobbie at work. We are working on responses to S & P's questions. Look forward to our meeting on Friday.

Sent from my iPhone

On Mar 14, 2016, at 3:09 PM, "Weil, Chloe" <chloe.weil@standardandpoors.com> wrote:

> Good afternoon-  
>  
> As I mentioned on Friday, we placed the district on credit watch, pending the review, with a goal to complete the review by March 25th. I am attaching a copy of the rating action for your information.  
>  
> Also, can you let me know the names of all of the attendees for the meeting on Friday? We will need to provide to our building security.  
>  
> Thank you, we appreciate your time gathering the data for our review.  
>  
> Best,  
>  
> Chloe  
>  
> [cid:image001.jpg@01D17E02.2AE0E070]  
>  
> Chloe Weil  
> Director, U.S. Public Finance Infrastructure Group  
>  
> Standard & Poor's Ratings Services  
> One California Street, 31st Floor, San Francisco, CA 94111 T  
> 415.371.5026 | F 415.371.5090  
> chloe.weil@standardandpoors.com<mailto:chloe.weil@standardandpoors.com>  
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analysts are not permitted to engage in discussions about fees. Any questions about fees or any other commercial, non-analytical matters should be directed to your Client Business Manager.

>

> From: Bobbie Ormonde [mailto:bormonde@westlandswater.org]

> Sent: Friday, March 11, 2016 9:22 AM

> To: Weil, Chloe (Analytical)

> Subject: RE: S&P Review of Westlands Water District

>

> Chloe,

>

> We are in the process of gathering the data requested. As for the date of our meeting, I am awaiting availability of a few members of our team. I will get back to you today.

>

> Bobbie Ormonde

> Director of Finance and Administration Westlands Water District

> 3130 N. Fresno Street

> Fresno, CA 93703

> (559) 241-6203

>

>

>

>

> From: Weil, Chloe [mailto:chloe.weil@standardandpoors.com]

> Sent: Thursday, March 10, 2016 6:23 PM

> To: Brown, Douglas S.; Bobbie Ormonde

> Cc: Dyson, Paul

> Subject: S&P Review of Westlands Water District

> Importance: High

>

> Good evening Bobbie -

>

> As I previously indicated, we will be working on a full review of the rating on the District's revenue bonds as a result of yesterday's SEC enforcement action. We last conducted a full review of the District in relation to the May 2013 issuance by the San Luis & Delta-Mendota Water Authority of the series 2013A bonds.

>

> I am attaching our rating report from 2013 as a point of reference, and I am sending an attached list of key questions for your consideration to help expedite our credit review. As you can see, the bulk of our questions relate to the accounting treatment of the adjustments made in 2010 and 2012, and making sure we understand each of the revenue items in the fiscal 2015 audit - but we are also focused on the District's financial projections over the next five years.

>

> We are hoping to schedule a meeting with the District (either in person or by phone) on March 18th or 21st to give us enough time to finalize the rating by March 25th. We will wait to hear from you for which date works best for the District.

>

> Finally, I am also including a copy of our new water/sewer criteria that we released in January.

>

> Regards,

>

> Chloe

>

> [cid:image001.jpg@01D17E02.2AE0E070]

>

> Chloe Weil

> Director, U.S. Public Finance Infrastructure Group

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>  
>  
> From: Brown, Douglas S. [mailto:DBROWN@SYCR.com]  
> Sent: Thursday, March 10, 2016 1:01 PM  
> To: Weil, Chloe (Analytical)  
> Cc: Bobbie Ormonde  
> Subject: WWD  
>  
> Chloe,  
>  
> Per our conversation:  
>  
> Bobbie Ormonde  
> District Director of Finance & Administration  
> bormonde@westlandswater.org<mailto:bormonde@westlandswater.org>  
> (559) 241-6203  
>  
>  
> Douglas S. Brown  
> [cid:image002.png@01D17E02.2AE0E070]<http://www.sycr.com/>  
>  
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> 660 Newport Center Drive, Suite 1600 | Newport Beach, CA 92660  
> (c) 949.500.0855  
> dbrown@sycr.com<mailto:dbrown@sycr.com> |  
> sycr.com<http://www.sycr.com> Website  
> Profile<http://www.sycr.com/Douglas-S-Brown/> |  
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**To:** Gayle Holman[gholman@westlandswater.org]; 'Dan Pope'[dpope@westlandswater.org]  
**Cc:** Tom Birmingham[tbirmingham@westlandswater.org]  
**From:** Johnny Amaral  
**Sent:** Fri 3/25/2016 9:41:27 PM  
**Subject:** S&P Revised Outlook  
[Press Release Westlands Outlook Change.pdf](#)

Gayle,

Can you send something out to the growers that looks like this? You probably would have to paste all of the grower email addresses into the BCC line and send. Would that work Tom?



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## Westlands Water District, CA Ratings Removed From CreditWatch, Affirmed After Our Query Into SEC Enforcement Action

**Primary Credit Analyst:**

Chloe S Weil, San Francisco (1) 415-371-5026; chloe.weil@standardandpoors.com

**Secondary Contact:**

Paul J Dyson, San Francisco (1) 415-371-5079 paul.dyson@standardandpoors.com

SAN FRANCISCO (Standard & Poor's) March 25, 2016--Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs); and
- 'A+' long-term rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, issued for Westlands Water District.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch with negative implications on March 14, 2016, following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Security Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's

extraordinary accounting transactions that were the subject of the proceedings.

"Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as 'vulnerable' and will continue to monitor the district's continuing disclosure practices," said Standard & Poor's credit analyst Chloe Weil. "However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We further believe the district's present financial position remains comparable to that of its peers at the present rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon," Ms. Weil added.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

#### RELATED CRITERIA AND RESEARCH

##### Related Criteria

- USPF Criteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- USPF Criteria: Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- USPF Criteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- Criteria: Use of CreditWatch And Outlooks, Sept. 14, 2009

##### Related Research

- U.S. State And Local Government Credit Conditions Forecast, Jan. 11, 2016
- U.S. Municipal Water And Sewer Utilities 2014 Sector Outlook: Learning To Do More With Less, Jan. 9, 2014

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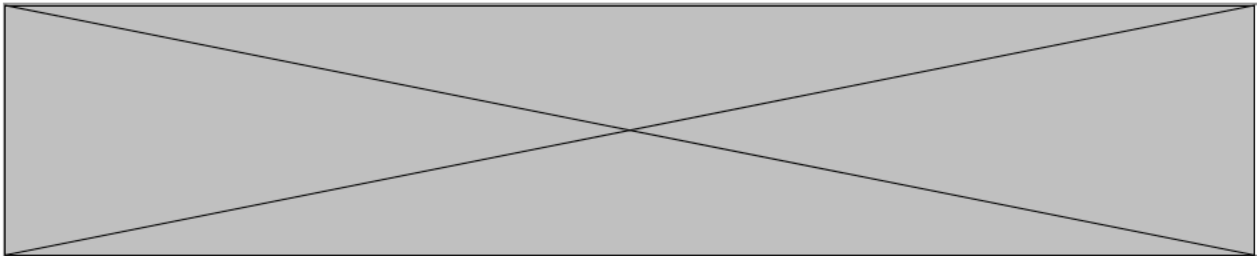
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From: Senator.Walters@outreach.senate.ca.gov  
Sent: Tue 7/3/2012 5:17:07 PM  
Subject: Walters' Economic Watch

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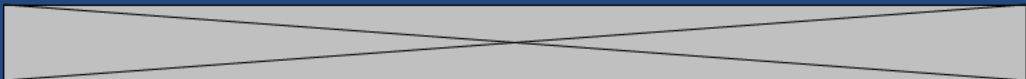


July 3, 2012

**California Agencies Fail to Recover \$20.8 Million Lost to Waste and Fraud**

According to the California State Auditor, from 2004 through 2011, state agencies have recouped approximately \$209.7 million of the \$230.5 million lost to waste or fraud, failing to recover \$20.8 million. Though only a small fraction of California’s \$91.3 billion budget, the \$230.5 million lost because of waste and fraud may not even represent the total amount of funds wasted by California agencies. The State Auditor’s office does not audit or investigate every state agency. In fact, over the past eight years, several state laws were changed in such a way as to prevent agencies from collecting funds once deemed recoverable. “It is not something on us. It is up to the departments where we’ve identified waste to track down that money,” said Margarita Fernandez, chief of public affairs for the California State Auditor. “We make recommendations to the agencies, but we can’t force them to do something.”

[To view the State Auditors website, click here.](#)



*Enjoy a cup of coffee on me if you are the first to answer...*

Home prices in Orange County are at a 2 year high. The median home price is up by what percentage since last year?

(Be the first person to email the correct answer to: [pensionreformca@gmail.com](mailto:pensionreformca@gmail.com))

**Congratulations to last week’s winner! Nathan Overbeek, Penn Valley, CA**

Q: What is Orange County's unfunded public pension liability, according to County Supervisor John Moorlach?  
A: \$4.4 billion

*No taxpayer or campaign funds are used for the purchase of the cup of coffee.*



**To:** Thomas W. Birmingham Esq.  
(tbirmingham@westlandswater.org)[tbirmingham@westlandswater.org]  
**From:** Mark M. Borba  
**Sent:** Fri 3/11/2016 10:50:30 AM  
**Subject:** The feds slam a big water agency for cooking its books--but they didn't go far enough - LA Times

You've got a fan! What's up with this dude?

<http://www.latimes.com/business/hiltzik/la-fi-hiltzik-westlands-snap-htmlstory.html>

The feds slam a big water agency for cooking its books -- but they didn't go far enough

The Westlands Water District is the biggest of big shots in the water world of California's Central Valley -- so big that it was able late last year to beat the federal government in a secret deal<<http://www.latimes.com/business/hiltzik/la-fi-hiltzik-20150920-column.html>> to secure a reliable water supply for its member almond and pistachio growers in perpetuity -- despite the fact that the deal makes a hash of efforts to produce an overall state water policy.

But on Wednesday, the Securities and Exchange Commission</topic/business/market-exchange/securities/u.s.-securities-exchange-commission-ORGOV000050-topic.html> unveiled another aspect to Westlands' way of doing business: cooking the books<<http://www.sec.gov/litigation/admin/2016/33-10053.pdf>>. The SEC slapped the district and two officers with a total of \$195,000 in penalties for faking financial records in connection with a 2012 bond issue.

A little Enron accounting.

Westlands General Manager Thomas Birmingham describes the financial finagling caught by the SEC

As my colleague Geoffrey Mohan reports<<http://www.latimes.com/business/la-fi-water-district-scandal-20160310-story.html>>, the SEC is crowing about this being its largest settlement ever in a case against a municipal bond agency. Sadly, however, the agency's action is just another slap on the wrist for white collar wrongdoers. Nothing in the settlement, big as it is, will deter either Westlands or any other municipal bond issuer from trying to pull the same stunt in the future.

What's especially disturbing is that the SEC, despite calling this a case of "negligence," had evidence that the district and its officers, General Manager Thomas Birmingham and former Treasurer Louie Ciapponi, knew exactly what they were doing. When questioned by a Westlands board member about the transaction at issue, Birmingham joked that they were engaging in "a little Enron accounting."

Yet no one admitted to wrongdoing in the settlement, making this another case of something being done illegally, yet without any human being actually being identified as the wrongdoing party. What's left unsaid in the SEC action is why Birmingham or Ciapponi should be henceforth permitted to hold any official office with an agency issuing bonds to the public. Also escaping scot-free, at least for the moment, is the "independent auditor" who told Westlands that the financial maneuvers the SEC found improper were "permissible."

-----  
Related:

How a rich water district beat the government in a secret deal<<http://www.latimes.com/business/hiltzik/la-fi-hiltzik-20150920-column.html>>

A huge water district defends a secret handout<<http://www.latimes.com/business/hiltzik/la-fi-mh-a-huge->

water-district-defends-a-secret-handout-20150929-column.html>

-----  
The auditing firm isn't identified in the SEC documents, but the firm whose 2012 Westlands audit is attached to the bond circular at the heart of the SEC's case<<http://emma.msrb.org/EP701882-EP545283-EP946396.pdf>> is Clovis-based Sampson, Sampson & Patterson. We've asked the firm to comment, but have not received a response.

Let's look at what they were up to. In 2009, the district discovered that its revenues would fall \$10 million below what it needed to meet bond covenants requiring it to collect 25% more each year than it had to pay in principal and interest on its debt. In fact, because of the drought, its coverage ratio wasn't 1.25, but as little as 0.11. Had that happened, it would have been in technical default on some of its bonds.

[Whoops: the circled figure in this Westlands bond offering was fake, according to the SEC.]Whoops: the circled figure in this Westlands bond offering was fake, according to the SEC.

Instead of bringing revenue up by raising rates to its users by 11.6%, which would have done the job, Westlands reclassified some of its cash holdings as revenue and moved some other money around. It did so, the SEC says, "solely" to meet the covenant.

What concerns the SEC is that the misstatement made it into the official offering for a \$77-million refunding bond issue in 2012. That misled buyers of those bonds into thinking that the district invariably collected enough money to cover its bonds, when the truth is it had fallen hugely short in 2010. That would have made a difference to many investors, who might have decided to stay away.

The implications of all this are serious. For one thing, it shows that Westlands management is willing to mislead investors simply to save money for its users. It raises the question of whether a district that behaves this way is a suitable partner for the federal government in other deals, including the huge litigation settlement last year that was negotiated in secret, and that amounted to a huge federal giveaway to the district. And it could affect a congressional debate over that settlement. It should.

The SEC action casts a shadow over \$200 million in bonds issued by Westlands and a neighboring district, which have been placed on negative credit watch by the rating agency Moody's. But the darkest shadow is cast over the cause of good governance. As long as senior officials can boast about doing "Enron accounting" and then, when they're caught, get off without admitting their wrongdoing for the record, there's little hope that the public interest will be protected.

Keep up to date with Michael Hiltzik. Follow @hiltzikm<<https://twitter.com/hiltzikm>> on Twitter, see his Facebook page<<http://www.facebook.com/hiltzik>>, or email [michael.hiltzik@latimes.com](mailto:michael.hiltzik@latimes.com)<<mailto:michael.hiltzik@latimes.com>>

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"Freedom is the right to question and  
change the established way of doing things"



-- Ronald Reagan

**To:** 'Waldo, James'[JWaldo@gth-law.com]  
**Cc:** Michelle Ostrowski[mostrowski@westlandswater.org]  
**From:** Tom Birmingham  
**Sent:** Mon 4/4/2016 6:09:26 AM  
**Subject:** S&P Revised Outlook  
[Westlands Water District S&P Report 2016 Review.pdf](#)

Jim,

Attached is the S&P analysis I mentioned.

Tom

# RatingsDirect®

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## Summary:

Westlands Water District, California  
San Luis & Delta-Mendota Water  
Authority; Joint Criteria; Water/Sewer

### Primary Credit Analyst:

Chloe S Weil, San Francisco (1) 415-371-5026; [chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)

### Secondary Contact:

Paul J Dyson, San Francisco (1) 415-371-5079; [paul.dyson@standardandpoors.com](mailto:paul.dyson@standardandpoors.com)

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# Westlands Water District, California San Luis & Delta-Mendota Water Authority; Joint Criteria; Water/Sewer

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<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
<b>San Luis &amp; Delta-Mendota Wtr Auth, California</b>		
Westlands Wtr Dist, California		
San Luis & Delta-Mendota Wtr Auth (Westlands Wtr Dist) (BAM)		
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## Rationale

Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

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- 'A+' rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, of which Westlands Water District is the guarantor.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Securities and Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1.0x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's extraordinary accounting transaction that were the subject of the proceedings. Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as "vulnerable" and will continue to monitor the district's continuing disclosure practices. However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We believe the district's current financial position remains comparable to that of its peers at the current

rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon.

The ratings further reflect our assessment of the district's:

- Strong market position as the sole provider of irrigation water in a diverse agricultural area;
- Revised rate structure that enhances revenue stability despite significant increases in supplemental water supply costs and fluctuations in water deliveries from the U.S. Bureau of Reclamation's Central Valley Project (CVP);
- Significant progress on the decades-long dispute with the Bureau of Reclamation regarding drainage-impaired soils in the service territory, although the legal settlement remains subject to congressional approval; and
- Future challenges associated with the procurement of additional raw water sources over the long-term horizon.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The valley has been farmed with irrigation water in varying degrees for approximately half a century, and could not exist on its current scale without major water infrastructure programs such as the CVP. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable, and produces high-value permanent crops, such as almonds and pistachios, as well as tomatoes, grapes, and cantaloupes. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

Water sales and purchased water costs are the district's primary revenue sources and expenses. The main water source comes from a 1.195 million acre-foot contract entitlement with the U.S. Bureau of Reclamation's CVP. The district serves as the leading provider of imported water to the region. Supply mix can vary significantly from year to year based on CVP allocations, which are driven by hydrology. The annual safe yield of the confined underground aquifer adds another 200,000 acre-feet and local farmers generally extract as much groundwater as possible, but CVP allocations and groundwater supplies have long been inadequate to meet the region's water demand, which is approximately 1.2 million acre-feet. Accordingly, the district is continually engaged in efforts to supplement its water supply from outside sources. In recent years, the district has provided between one-half and two-thirds of all water consumed in the service area through higher-cost supplemental purchases.

As the district's financial performance is hydrology-dependent, the district performs robust financial forecasting and is proactive in maintaining relationships with other water districts and key stakeholders to ensure adequate water transfers, and to that end has been adept at securing regulatory approvals to receive supplemental water.

Weather-normalized, formal historic trend analysis is performed and updated annually for both revenue and expenses; and we believe regular efforts are made to determine whether one or more factors will cause revenues or expenses to deviate from their long-term trends over the next few years. In addition, beginning in fiscal year 2011, to help alleviate the burden on water users for the increased cost of water in short water supply years, the district's board elected to collect half of the operations & maintenance charges through a land-based charge to landowners rather than through the water rate.

On Sept. 15, 2015, the U.S. Department of Justice and Westlands approved a settlement ending a decades-long dispute over the Bureau of Reclamation's responsibility to provide drainage for the farmland within Westlands. The drainage

settlement requires Westlands to assume full responsibility for drainage management within its boundaries, and will cap CVP deliveries at 75% of the district's contract entitlement. Furthermore, Westlands will be required to retire a minimum of 100,000 acres of land and to repurpose the non-irrigated lands for environmentally friendly uses. We view the settlement as manageable as the district has already acquired 90,000 acres of land for this purpose. The district also has over \$40 million in designated reserves that could be used to meet the remaining requirements under the settlement.

The district's financial performance has been sound in our view over the past five years, despite the impact of the ongoing drought on the district's water supply. Senior lien debt service coverage (DSC) improved to 2.1x in fiscal 2015 from 1.8x in fiscal 2014, while all-in DSC, which adjusts for the district's fixed charges included in operating expenses, the district's subordinated lien obligations, and the impact of one-time land sales on revenues, improved to 1.6x from 1.2x, which we consider good. Based on unaudited results, we expect all-in DSC in fiscal 2016 to remain strong, at about 1.7x, excluding one-time land sales. Based on management's forecast, we expect all-in DSC to decline to about 1.0x in fiscal 2017, which we consider adequate at the current rating level. With a debt-to-capitalization ratio of about 55% as of February 28, 2015, we consider the district to be moderately leveraged.

The district's liquidity position is strong, in our view. The district's cash and cash equivalents as of Feb. 29, 2016 (unaudited) was \$102 million, which represented 314 days' of operating expenses. We understand that the district maintains a strong liquidity position, in part to enable it to opportunistically acquire water rights or otherwise firm up its water supply.

The proposed California WaterFix (the revised approach to the Bay Delta Conservation Plan), a comprehensive plan for the Bay-Delta to address environmental and water supply issues, if adopted and implemented, would entail substantial infrastructure investment in the Delta and implementation of other conservation measures. The capital costs associated with this project will likely be large--most recently estimated at \$14.6 billion, and the district estimates that its proportionate share would be about \$2.4 billion. However, we recognize that the method for financing the project has not been established, and the district has no obligation to fund these future costs. However, we believe that substantial increases in the district's land-based charges and CVP water rates will be necessary to cover the district's (yet to be determined) share of the planned Bay Delta improvements. Even so, we believe that the CVP water may remain the district's lowest cost source of water, and is critical to support the region's agricultural output.

## Outlook

The stable outlook reflects our view of the district's competitive position as the leading provider of supplemental water to a region with strong water demand and scarce water resources. During the two-year outlook period, we anticipate that the district will continue to sustain its good coverage metrics and extremely strong liquidity position while managing its water supply. We also expect the district to finalize its plans regarding the drainage settlement and that the district currently has ample capital funding capacity to execute the requirements under the agreement.

### Upside scenario

Although not anticipated, due to the district's service territory characteristics and potential shifts in the water supply portfolio, we may raise the ratings if the district is able to stabilize and sustain strong coverage metrics and if the local

service economy strengthens and diversifies such that its characteristics are comparable to those of peers at a higher rating level.

#### Downside scenario

We may lower the ratings if changes to the water supply portfolio or unexpected capital needs cause the district's financial metrics to materially erode.

## Related Criteria And Research

#### Related Criteria

- USPFCriteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- USPFCriteria: Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- USPFCriteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- Criteria: Use of CreditWatch And Outlooks, Sept. 14, 2009

#### Related Research

- U.S. State And Local Government Credit Conditions Forecast, Jan. 11, 2016
- U.S. Municipal Water And Sewer Utilities 2014 Sector Outlook: Learning To Do More With Less, Jan. 9, 2014

Ratings Detail (As Of March 28, 2016)		
Westlands Wtr Dist wtr & swr (AGM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
Westlands Wtr Dist (Westlands Wtr Dist) JOINT CRIT		
<i>Long Term Rating</i>	AAA/A-1	Current
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

Many issues are enhanced by bond insurance.

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of Ratings Direct at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

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**To:** Cindy Kao(ckao@valleywater.org)[ckao@valleywater.org]  
**From:** Dan Pope  
**Sent:** Tue 4/12/2016 3:11:34 PM  
**Subject:** S&P bond rating review of Westlands Water District  
[Press Release Westlands Outlook Change.pdf](#)  
[Westlands Water District S&P Report 2016 Review.pdf](#)

Cindy,

I apologize for not sending the attachments I mentioned last week at the CWF risk forum in Sacramento. I believe the S&P press release and subsequent report speak for themselves. They are public documents and have been filed with EMMA. I would welcome scheduling a time to meet and discuss with whomever you feel appropriate at your District should you believe it would be helpful.

Best regards,

Dan Pope  
Chief Operating Officer  
Westlands Water District  
559.241.6204

# RatingsDirect®

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## Westlands Water District, CA Ratings Removed From CreditWatch, Affirmed After Our Query Into SEC Enforcement Action

**Primary Credit Analyst:**

Chloe S Weil, San Francisco (1) 415-371-5026; chloe.weil@standardandpoors.com

**Secondary Contact:**

Paul J Dyson, San Francisco (1) 415-371-5079; paul.dyson@standardandpoors.com

SAN FRANCISCO (Standard & Poor's) March 25, 2016--Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs); and
- 'A+' long-term rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, issued for Westlands Water District.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch with negative implications on March 14, 2016, following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Security Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's

extraordinary accounting transactions that were the subject of the proceedings.

"Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as 'vulnerable' and will continue to monitor the district's continuing disclosure practices," said Standard & Poor's credit analyst Chloe Weil. "However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We further believe the district's present financial position remains comparable to that of its peers at the present rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon," Ms. Weil added.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

#### RELATED CRITERIA AND RESEARCH

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Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of RatingsDirect at [www.globalcreditportal.com](http://www.globalcreditportal.com) and at [www.spcapitaliq.com](http://www.spcapitaliq.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box

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Authority; Joint Criteria; Water/Sewer

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Weather-normalized, formal historic trend analysis is performed and updated annually for both revenue and expenses; and we believe regular efforts are made to determine whether one or more factors will cause revenues or expenses to deviate from their long-term trends over the next few years. In addition, beginning in fiscal year 2011, to help alleviate the burden on water users for the increased cost of water in short water supply years, the district's board elected to collect half of the operations & maintenance charges through a land-based charge to landowners rather than through the water rate.

On Sept. 15, 2015, the U.S. Department of Justice and Westlands approved a settlement ending a decades-long dispute over the Bureau of Reclamation's responsibility to provide drainage for the farmland within Westlands. The drainage



settlement requires Westlands to assume full responsibility for drainage management within its boundaries, and will cap CVP deliveries at 75% of the district's contract entitlement. Furthermore, Westlands will be required to retire a minimum of 100,000 acres of land and to repurpose the non-irrigated lands for environmentally friendly uses. We view the settlement as manageable as the district has already acquired 90,000 acres of land for this purpose. The district also has over \$40 million in designated reserves that could be used to meet the remaining requirements under the settlement.

The district's financial performance has been sound in our view over the past five years, despite the impact of the ongoing drought on the district's water supply. Senior lien debt service coverage (DSC) improved to 2.1x in fiscal 2015 from 1.8x in fiscal 2014, while all-in DSC, which adjusts for the district's fixed charges included in operating expenses, the district's subordinated lien obligations, and the impact of one-time land sales on revenues, improved to 1.6x from 1.2x, which we consider good. Based on unaudited results, we expect all-in DSC in fiscal 2016 to remain strong, at about 1.7x, excluding one-time land sales. Based on management's forecast, we expect all-in DSC to decline to about 1.0x in fiscal 2017, which we consider adequate at the current rating level. With a debt-to-capitalization ratio of about 55% as of February 28, 2015, we consider the district to be moderately leveraged.

The district's liquidity position is strong, in our view. The district's cash and cash equivalents as of Feb. 29, 2016 (unaudited) was \$102 million, which represented 314 days' of operating expenses. We understand that the district maintains a strong liquidity position, in part to enable it to opportunistically acquire water rights or otherwise firm up its water supply.

The proposed California WaterFix (the revised approach to the Bay Delta Conservation Plan), a comprehensive plan for the Bay-Delta to address environmental and water supply issues, if adopted and implemented, would entail substantial infrastructure investment in the Delta and implementation of other conservation measures. The capital costs associated with this project will likely be large--most recently estimated at \$14.6 billion, and the district estimates that its proportionate share would be about \$2.4 billion. However, we recognize that the method for financing the project has not been established, and the district has no obligation to fund these future costs. However, we believe that substantial increases in the district's land-based charges and CVP water rates will be necessary to cover the district's (yet to be determined) share of the planned Bay Delta improvements. Even so, we believe that the CVP water may remain the district's lowest cost source of water, and is critical to support the region's agricultural output.

## Outlook

The stable outlook reflects our view of the district's competitive position as the leading provider of supplemental water to a region with strong water demand and scarce water resources. During the two-year outlook period, we anticipate that the district will continue to sustain its good coverage metrics and extremely strong liquidity position while managing its water supply. We also expect the district to finalize its plans regarding the drainage settlement and that the district currently has ample capital funding capacity to execute the requirements under the agreement.

### Upside scenario

Although not anticipated, due to the district's service territory characteristics and potential shifts in the water supply portfolio, we may raise the ratings if the district is able to stabilize and sustain strong coverage metrics and if the local

service economy strengthens and diversifies such that its characteristics are comparable to those of peers at a higher rating level.

#### Downside scenario

We may lower the ratings if changes to the water supply portfolio or unexpected capital needs cause the district's financial metrics to materially erode.

## Related Criteria And Research

#### Related Criteria

- USPFCriteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- USPFCriteria: Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- USPFCriteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- Criteria: Use of Credit Watch And Outlooks, Sept. 14, 2009

#### Related Research

- U.S. State And Local Government Credit Conditions Forecast, Jan. 11, 2016
- U.S. Municipal Water And Sewer Utilities 2014 Sector Outlook: Learning To Do More With Less, Jan. 9, 2014

Ratings Detail (As Of March 28, 2016)		
Westlands Wtr Dist wtr & swr (AGM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from Credit Watch
Westlands Wtr Dist (Westlands Wtr Dist) JOINT CRIT		
<i>Long Term Rating</i>	AAA/A-1	Current
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from Credit Watch
Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from Credit Watch

Many issues are enhanced by bond insurance.

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of Ratings Direct at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

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**To:** Johnny Amaral (jamaral@westlandswater.org)[jamaral@westlandswater.org]  
**From:** Michael Burns  
**Sent:** Thur 8/18/2016 12:57:27 PM  
**Subject:** let's talk about this when you have a chance

ENVIRONMENT

# State Auditors Look Into 'Potentially Improper' Delta Tunnel Transactions

**Barbara Barrigan-Parrilla**

August 17, 2016

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The Sacramento River | Photo: Zach Behrens/KCET

**Commentary:** Last week, Northern and Southern California state legislators had a rare breakthrough over one of the state's most divisive issues — water.

The Joint Legislative Audit Committee voted to instruct the State Auditor

to **launch an audit** of Governor Jerry Brown's proposed **Delta Tunnels**. Recent revelations show the project has murky funding and even supporters know the tunnels cannot be built on a financial house of cards.

The Delta Tunnels would be 40-foot tall, 35-mile long tunnels dug beneath the San Francisco Bay-Delta estuary. They would deliver fresh Sacramento River water to state and federal projects that send water to agriculture in the San Joaquin Valley and Southern California cities. California voters rejected the Peripheral Canal proposal in 1982.

Now rebranded the "CA WaterFix," the project would cost \$17 billion, with interest and operational costs bringing the total payback amount to over \$50 billion. "CA WaterFix" maintains the project will be paid for entirely by those water districts who would get the water, not state or federal taxpayers. To date, \$248 million has been spent on the Delta Tunnels planning.

Documents recently released under the Public Records Act reveal potentially improper transactions involving public funds within the California Department of Water Resources, Westlands Water District, San Luis Delta-Mendota Water Authority, Metropolitan Water District of Southern California (MWD), and Santa Clara Valley Water District. Meanwhile, the Deputy Inspector for the U.S. Department of Interior is investigating whether the California Department of Water Resources siphoned off millions of Federal taxpayer dollars meant for improving fish habitat to instead pay for the Delta Tunnels' environmental impact report.

The Howard Jarvis Taxpayers Association **said** the project's funding had become "a shell game."

## **Who Will Pay for the Delta Tunnels?**

So far, none of the water districts have committed to paying their fair share of the \$17 billion project.

MWD has said they won't pay for the project if their ag partners, Westlands Water District and the San Luis Delta-Mendota Water Authority, do not participate financially. The agricultural water districts announced they would not pay to complete the current preliminary work on the tunnels unless the project first won regulatory approval. The agricultural parties don't seem entirely convinced the investment will bring enough water to be worth the expense. Meanwhile, the Fitch Credit rating services has issued a negative credit rating to San Luis and Westlands due to their outstanding debt load and



“a little Enron accounting.”

If big agricultural users who will most benefit from the water cannot afford their 40 percent of a \$17 billion project, who will subsidize these users?

Most likely state and federal taxpayers, in violation of the original funding agreement for the project. **AP has reported** that state officials told Metropolitan that “any additional funding needs to complete the planning phase will be provided by state or federal sources.”

No wonder legislators want an audit!

## **Who Would Benefit?**

An estimated 70 percent of the water from the Delta Tunnels will flow to farms in the southern San Joaquin Valley. These farms represent just .3 percent of the state’s GDP.

**Mother Jones** recently reported Stewart and Lynda Resnick’s firm “The Wonderful Company” has cornered the market in pistachios, pomegranates, and even water sales. They hope to expand their holdings with Delta Tunnels water and are funding PR efforts supporting the Tunnels.

Metropolitan Water District officials (some of the highest paid public officials in California) would also benefit from a project that helps them continue selling imported water as Southern California’s water wholesaler.

## **Who Would Be Harmed?**

The science is clear. Water exports from the San Francisco Bay-Delta are killing off endangered species and causing encroaching saltwater that harms Delta farms that have been producing food for more than a century. Native salmon and smelt are on the edge of extinction and water quality in the Bay-Delta has plummeted. Already 90 percent of the fisheries in the San Francisco Bay-Delta have vanished. Famed chef Alice Waters is the latest to speak up on behalf of the state’s **salmon population** and what we stand to lose.

The burden of proof that the Tunnels won’t further harm to the estuary, endangered fish, or Bay-Delta communities, now lies in the hands of the California Department of Water Resources and the U.S. Bureau of Reclamation. The EPA has rejected their plan twice already.

## **Are the Tunnels a Good Investment?**

Climate scientists predict less Sierra snowpack and fewer rainstorm events in the future. There may be no reliable water source to fill the Tunnels.

Sea-level rise also presents a huge problem for the proposal. The lead engineer recently testified at State Water Board hearings that the Delta Tunnels have a lifespan of 100 years, while the lead operations officer testified a few days later that they have only planned for 18 inches of sea level rise based on the first year of impact – 2030. Actual sea level rise could give the project a lifespan of only 30 years.

KCET's Chris Clarke described the Delta Tunnels as “teetering on the edge of obsolescence before the first shovel of earth is dug.”

### **Is There a Better Way to Spend \$17B on Water Infrastructure?**

Opponents warn that when interest and operation costs are included, the Tunnels could cost up to \$60 billion. Ratepayers and taxpayers would then end up paying as much as \$2 billion per year for a thirty-year project and no additional water.

We support major investments in California's water infrastructure. But the Delta Tunnels are a 20th Century solution that will not “fix” anything and not create one new drop of water.

Let's instead invest in water conservation, water recycling, groundwater recharge, urban water capture, and replacing lawns with drought-friendly landscapes. Investing in local projects like the ones outlined in the 2015 report by the Environmental Water Caucus, “[A Sustainable Water Plan for California](#).” That's the best way forward for California's environmental and economic future.

*Commentaries are the opinions of their authors, and do not necessarily reflect the views of KCETLink.*



## **ABOUT THE AUTHOR BARBARA BARRIGAN-PARRILLA**

Barbara Barrigan-Parrilla is Executive Director of Restore the Delta and a resident of the San Francisco Bay-Delta.

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**To:** 'Johnny Amaral'[jamaral@westlandswater.org]  
**From:** Tom Birmingham  
**Sent:** Fri 3/25/2016 9:39:14 PM  
**Subject:** Standard & Poor's Press Release  
[Press Release Westlands Outlook Change.pdf](#)

# RatingsDirect®

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## Westlands Water District, CA Ratings Removed From CreditWatch, Affirmed After Our Query Into SEC Enforcement Action

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SAN FRANCISCO (Standard & Poor's) March 25, 2016--Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs); and
- 'A+' long-term rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, issued for Westlands Water District.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch with negative implications on March 14, 2016, following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Security Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's

extraordinary accounting transactions that were the subject of the proceedings.

"Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as 'vulnerable' and will continue to monitor the district's continuing disclosure practices," said Standard & Poor's credit analyst Chloe Weil. "However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We further believe the district's present financial position remains comparable to that of its peers at the present rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon," Ms. Weil added.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

#### RELATED CRITERIA AND RESEARCH

##### Related Criteria

- USPF Criteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- USPF Criteria: Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- USPF Criteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- Criteria: Use of CreditWatch And Outlooks, Sept. 14, 2009

##### Related Research

- U.S. State And Local Government Credit Conditions Forecast, Jan. 11, 2016
- U.S. Municipal Water And Sewer Utilities 2014 Sector Outlook: Learning To Do More With Less, Jan. 9, 2014

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of RatingsDirect at [www.globalcreditportal.com](http://www.globalcreditportal.com) and at [www.spcapitaliq.com](http://www.spcapitaliq.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box

located in the left column.

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**From:** Houston, David  
**Sent:** Thur 3/2/2017 10:49:37 PM  
**Subject:** Hawkins Advisory: Municipal Market Regulatory Update  
[Hawkins Advisory.pdf](#)

FYI - See mention of Westlands about page 8.

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**From:** Hawkins Mailings [mailto:M@hawkins.com]  
**Sent:** Thursday, March 02, 2017 2:18 PM  
**Subject:** Hawkins Advisory: Municipal Market Regulatory Update

This Hawkins Advisory describes the proposed amendments to Rule 15c2-12 and provides a summary and analysis of SEC municipal enforcement actions over the last year.

\*\*\*\*\*

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# HAWKINS ADVISORY

## MUNICIPAL MARKET REGULATORY UPDATE

### **Proposed Amendments to Rule 15c2-12**

The Securities and Exchange Commission (the “SEC”) on March 1, 2017, published for comment proposed amendments to SEC Rule 15c2-12 (17 CFR § 240.15c2-12).<sup>1</sup> Those amendments would add the following two events to be reported in a timely manner, not in excess of ten business days after the occurrence of the event, with respect to the securities being offered:

1. Incurrence of a financial obligation of the [issuer or] obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the [issuer or] obligated person, any of which affect security holders, if material; and
2. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the [issuer or] obligated person, any of which reflect financial difficulties.

The deadline for comments on the proposed amendments is 60 days following publication of the proposing release in the Federal Register. If the proposed amendments are approved, the new events would only apply to “continuing disclosure agreements that are entered into in connection with primary offerings occurring on or after the compliance date of such proposed amendments.”<sup>2</sup>

The term “financial obligation” is defined as follows:

The term financial obligation means a (i) debt obligation, (ii) lease, (iii) guarantee, (iv) derivative instrument, or (v) monetary obligation resulting from a judicial, administrative, or arbitration proceeding. The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with this rule.

### **Ch-Ch-Ch-Changes at the SEC**

The SEC currently has only two Commissioners, one Republican and one Democrat. Commissioners are appointed by the President and with the advice and consent of the Senate.<sup>3</sup> Not more than three Commissioners may be members of the same political party, and in making appointments members of different political parties are required to be appointed alternately as nearly as may be practicable.<sup>4</sup> Thus, it can be expected that the SEC will have a Republican Chairman,<sup>5</sup> two other Republican Commissioners, and two Democratic Commissioners. How, if at all, will such composition of the SEC change the ongoing operation and focus of the SEC’s Public Finance Abuse Unit and of the Office of Municipal Securities?

<sup>1</sup> SEC Rel. No. 34-80130 (Mar. 1, 2017).

<sup>2</sup> Although there is some ambiguity created by tying the effective date to the “offering,” the SEC staff, when the same language was employed in connection with the 2010 amendments to the Rule, clarified that the effective date was tied to the date the continuing disclosure agreement was executed, i.e., the settlement date.

<sup>3</sup> Section 4(a) of the Securities Exchange Act of 1934.

<sup>4</sup> *Id.*

<sup>5</sup> President Trump has nominated Jay Clayton to be Chairman of the SEC. Mr. Clayton identifies himself as an Independent.

Arthur Levitt, as Chairman of the SEC, oversaw the creation in 1995 of the SEC's Office of Municipal Securities, with the Director of that Office reporting directly to the SEC Chairman. It was during Levitt's tenure as Chairman (July 1993 – February 2001) that SEC enforcement in the municipal arena gained attention, with the enforcement actions against Orange County, CA (Jan. 1996), Maricopa County, AZ (Sept. 1996), and the City of Syracuse, NY (Sept. 1997). Of particular import, the SEC released the Orange County Report (Jan. 1996), which cautioned that "[i]n addition to the governmental entity issuing municipal securities, public officials of the issuer who have ultimate authority to approve the issuance of securities and related disclosure documents have responsibilities under the federal securities laws as well." In addition, it was during Chairman Levitt's tenure that the continuing disclosure provisions of Rule 15c2-12 were approved by the SEC.

Arthur Levitt was succeeded as Chairman by a Republican appointee, Harvey Pitt. Chairman Pitt, who had served as General Counsel of the SEC, concluded that the Office of Municipal Securities should report to the Director of the Office of Market Supervision, an office within the Division of Trading and Markets.<sup>6</sup> At that time, it was reported that "[m]unicipal securities oversight – a top priority for former SEC chairman Arthur Levitt – is not even on the radar screen of Harvey Pitt, Levitt's successor, and is in danger of falling off the SEC's agenda entirely."<sup>7</sup> Chairman Pitt's tenure was from August 2001 to February 2003. The Office of Municipal Securities did not get re-established as a stand-alone office until the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act (July 21, 2010), which required that the Director of such Office report directly to the Chairman.

The new Administration has advised that it intends to revise or repeal much of the statutory and regulatory structure established by the Dodd-Frank Act. On February 3, 2017, President Trump issued an Executive Order entitled "Core Principles for Regulating the United States Financial System." In connection with such Executive Order, the Administration's Press Secretary advised that it was being released because "[t]he Dodd-Frank Act is a disastrous policy that's hindering our markets, reducing the availability of credit, and crippling our economy's ability to grow and create jobs." Legislation to repeal many of the provisions of the Dodd-Frank Act is expected to be similar to HR 5983, the "Financial Choice Act of 2016," which was introduced by Rep. Hensarling in the last session of Congress (114<sup>th</sup> Congress, 2<sup>nd</sup> Session). HR 5983 would have amended the Dodd-Frank Act to have the Office of Municipal Securities report to the Director of the Division of Trading and Markets rather than directly to the Chairman.

The establishment in 2010 of the Office of Municipal Securities as a separate office reporting (once again) directly to the SEC Chairman, the creation of the Public Finance Abuse Unit in the Enforcement Division, the announcement of the MCDC Initiative, and the numerous and precedent-setting SEC enforcement actions in the municipal arena over the last eight years, all occurred during President Obama's term in office. If history is a guide, the appointment by President Trump of three new Commissioners, with one as Chairman, may result in the focus of the SEC turning away from the municipal market, as occurred during Chairman Pitt's tenure.

### **Recent Municipal Enforcement Actions**

Chair White noted that during her tenure the SEC brought a "bolder and more unrelenting approach to enforcement to change industry behavior." This is reflected in SEC remedies in recent municipal securities enforcement actions.<sup>8</sup> Of particular note are the following:

- \* Using "control person" liability to target municipal officials who did not have direct knowledge of misrepresentations in offerings, but who had control over the entities or individuals involved in the misconduct and the bond offerings<sup>9</sup>
- \* Obtaining an emergency court order to halt an allegedly misleading bond offering<sup>10</sup>

<sup>6</sup> The Office of Municipal Securities, starting in late 2000, had been reporting to the Director of the Division of Trading and Markets. "Muni Office Languishing under Pitt," THE BOND BUYER, June 6, 2002.

<sup>7</sup> *Id.*

<sup>8</sup> See speech of Andrew J. Ceresney, former Director of the SEC's Division of Enforcement, "The Impact of SEC Enforcement on Public Finance." (Oct. 13, 2016)

<sup>9</sup> *In re City of Allen Park, Michigan*, SEC Rel. Nos. 33-9677, 34-73539 (Nov. 6, 2014).

<sup>10</sup> SEC Press Rel. 2014-122, *SEC Obtains Court Order to Halt Fraudulent Bond Offering by City of Harvey, Ill.* (June 25, 2014).



- \* Holding individuals liable, and seeking both personal financial penalties and industry bars from the municipal finance business
- \* Imposing significant fines on municipal issuers (not simply disgorgement)
- \* Corresponding criminal indictment in connection with municipal bond offerings<sup>11</sup>
- \* Bringing first jury trial against a municipality for securities law violations<sup>12</sup>
- \* Requiring a municipal issuer to admit wrongdoing in an SEC enforcement action<sup>13</sup>
- \* Imposing remedies on both municipal securities underwriters and issuers in connection with the Municipalities Continuing Disclosure Cooperation Initiative
- \* Bringing enforcement actions against municipal advisors, both for failure to register and for violating an antifraud provision that is applicable solely to municipal advisors<sup>14</sup>

In addition, preceding Chair White's tenure, the SEC had established in January 2010 a separate group in the SEC's Enforcement Division, the Municipal Securities and Public Pensions Unit (now the Public Finance Abuse Unit), which consists of approximately 30 professionals (attorneys, accountants, and financial analysts) across the SEC's home and regional offices. The focus of this Unit is "misconduct in the large municipal securities market and in connection with public pension funds."<sup>15</sup>

This Advisory reviews the SEC's municipal securities enforcement actions during calendar year 2016 and 2017 to date. Such actions are summarized, in outline format, below:

1. *In re The Port Authority of New York and New Jersey* (Jan. 10, 2017)
  - a. First municipal issuer to admit wrongdoing in an SEC enforcement action<sup>16</sup>
  - b. Settlement was based on 17(a)(2) and 17(a)(3) [negligence]
  - c. Port Authority provided its own validity opinion, without outside bond counsel, for the bond offerings that were the subject of the order
  - d. Port Authority internal draft legal memoranda raised concerns that the use of bond proceeds for certain NJ projects was invalid - "legislative authorization for Port Authority participation in the Projects is lacking"
  - e. Upon further review, the Port Authority lawyers produced a revised memorandum in which they advised that "we can link the Projects to the existing authority under the Lincoln Tunnel legislation"
    - (i) In doing so, the memorandum cautioned that "The Port Authority engineering department will perform a traffic study to bolster the statutory conclusion," but "it is important to note that this statutory construction is not without doubt and may raise questions in the minds of some."
  - f. SEC based the securities law violation on a finding that "The Port Authority knew, or should have known, that known but undisclosed risks surrounding the Roadway Projects were material to potential investors is making investment decisions."

<sup>11</sup> *Town of Ramapo, New York*, at item 7 below.

<sup>12</sup> *SEC v. City of Miami and Boudreaux*, Civil Action 13-22600 (S.D. Fla., verdict rendered Sept. 14, 2016).

<sup>13</sup> *Port Authority of New York and New Jersey*, at item 1 below.

<sup>14</sup> *In re School Business Consulting*, at item 6 below.

<sup>15</sup> SEC Press Release 2010-5 (Jan. 13, 2010).

<sup>16</sup> As is the case in almost all SEC enforcement actions, debt service has been and continues to be paid in full when due.

- g. The Order noted that the legal staff made no disclosure to the Port Authority Board, which approved the financings in question, regarding (i) “potential legal issues surrounding the Roadway Projects,” and (ii) “nor was any disclosure made to the Board of Commissioners concerning the cited legal justification - that the Roadway Projects were linked to the Lincoln Tunnel - supporting the Port Authority’s participation in the projects.”
- h. Settlement:
  - (i) SEC noted remedial actions already undertaken, including “retaining and using outside bond counsel for all bond offerings (at the time of the events at issue in this matter [Jan 2012 - June 2014], the Port Authority had no outside bond counsel)
  - (ii) Retain an Independent Consultant to review policies and procedures relating to disclosure
  - (iii) Pay a civil money penalty of \$400,000
- i. Analysis:
  - (i) The National Association of Bond Lawyers standard (Model Bond Opinion Project, 2003) for delivering a bond opinion is as follows:

Bond counsel may render an “unqualified” opinion regarding the validity and tax exemption of bonds if it is firmly convinced (also characterized as having a “high degree of confidence”) that, under the law in effect on the date of the opinion, the highest court of the relevant jurisdiction, acting reasonably and properly briefed on the issues, would reach the legal conclusions stated in the opinion.

- (ii) It is unclear whether the internal Port Authority lawyers, in providing validity opinions, viewed themselves as guided by such standard. The settlement order is troublesome, however, if it can be read that even if bond counsel is able to satisfy the NABL standard for rendering a clean opinion, any internal draft documents analyzing preliminary concerns regarding validity should be disclosed.
- 2. *In re Consolo and O’Connor Davies* (Oct. 31, 2016)
  - a. Cease-and-desist order against the independent auditor for the Town of Ramapo, NY (see item 7 below) and the individual audit partner
  - b. Individual and firm knew that audit reports would be included in Official Statements of the Town
  - c. Allowed a \$3M receivable for the sale of land to be booked even after learning sale had not been completed
    - (i) Without the receivable, the General Fund would have had a negative balance in the FY 2010-2014 financial statements
  - d. Town between FY 2009 and FY 2014 used transfers from the Ambulance Fund to overstate the balance of the General Fund. Transfers ranged from \$1.3M to \$2.4M annually, with a cumulative impact on the General Fund balance of more than \$12M.

- (i) Employees in the Town's finance department raised concerns to the audit engagement team relating to the propriety of the interfund transfers, but audit partner continued to rely on a false representation from Town management
- (ii) FY 2014 audit report was issued after the audit firm had learned that the Town's financial statements were the subject of ongoing investigations by the FBI, the US Attorney's Office, and the SEC, and that the \$3M receivable was a focus of these investigations
- e. Audit firm found to have violated Rule 10b-5, and audit partner to have violated 17(a)(1) [device, scheme, or artifice to defraud], 17(a)(2) and 17(a)(3) [misstatement or omission of material fact]
- f. Remedies:
  - (i) Individual not allowed to be engagement partner for any municipal client for a period of five years. Paid a \$75K penalty.
  - (ii) Audit firm to retain an independent consultant, and must require each audit professional to complete 32 hours of audit-related training, including "professional skepticism in evaluating audit evidence" and "fraud prevention and detection training." Firm forfeited \$380K in audit fees and paid a \$100K penalty.

### 3. *MCDC Issuer Settlements* (Aug. 24, 2016)<sup>17</sup>

- a. 71 Settlements with Issuers from 45 different States
  - (i) Municipal issuers that settled included: States, counties, cities, school districts, airport authorities, sanitary districts, fire protection district, power agency, housing authorities
  - (ii) Obligated Persons that settled included: Universities, hospitals, college foundation, retirement residence, health care corporation, waste management company
  - (iii) SEC staff advised on December 13, 2016, that no further actions against issuers that filed voluntarily under MCDC are expected, but that the SEC staff will focus its resources on those issuers that did not file
- b. In most cases, issuers had affirmatively stated that they were in compliance with their continuing disclosure obligations when in fact there had been certain failures
  - (i) No statement in situations of non-compliance (Arkansas Tech University) was also the basis for one settlement
- c. CDA violations included:
  - (i) Failure to file audited financial statements
  - (ii) Failure to file financial information and operating data
  - (iii) Failure to file material event notice (defeasance; Ascension Health Alliance)
- d. The look-back period for the SEC's review
  - (i) In one instance (Delaware Trans. Auth.), the SEC cited 2012 and 2014 OSs that did not mention failure to file 2009 audited financials

<sup>17</sup> See HAWKINS ADVISORY, "MCDC Settlements with Issuers." (Aug. 24, 2016)

- e. The settlement orders require the issuers to undertake certain actions to ensure future compliance with continuing disclosure obligations, namely:
  - (i) Establish appropriate policies and procedures and training regarding continuing disclosure obligations within 180 days of the date of the settlement order
  - (ii) Comply with existing continuing disclosure undertakings, including updating past delinquent filings, within 180 days of the settlement order
  - (iii) Cooperate with any subsequent investigation by the SEC's Division of Enforcement regarding the misleading statements, including the roles of individuals or other parties involved
  - (iv) Disclose the settlement terms in any OS for an offering by the issuer within 5 years of the date of the settlement order
  - (v) Provide to the SEC staff a compliance certification regarding the applicable undertakings by the issuer on the 1-year anniversary date of the settlement order

4. *SEC v. Rhode Island Commerce Corporation* (aka "38 Studios") (Mar. – Aug. 2016)

- a. Complaint against the Issuer, two officials of Issuer, the investment banking firm, and the investment banker
- b. Private placement of revenue bonds, secured by (i) loan repayments made by borrower (38 Studios) from revenues from selling video games, (ii) moral obligation of Governor to request appropriated State funds if needed to pay debt service, and (iii) bond insurance. Bonds were offered and sold to sophisticated institutional investors.
- c. SEC alleged that OS failed to disclose that the proceeds of the private placement borrowing would not provide sufficient funding to complete the development of the contemplated video games. Bond issue of \$75M yielded \$50M of net proceeds, although feasibility studies showed \$75M would be needed to make 38 Studios viable. The OS contained no financial information about 38 Studios, but did include information about the State (audited financial statements, economic information, and credit ratings) and the bond insurer.
- d. 38 Studios did go bankrupt, but bondholders are being paid in accordance with the State's moral obligation pledge.
- e. Status:
  - (i) The two issuer officials settled, and each paid \$25K penalty and had a permanent injunction imposed that enjoins them from participating in an offering of municipal securities.
  - (ii) The investment banker had his case dismissed for failure to state a claim. The dismissal was without prejudice; the SEC filed an Amended Complaint; and the case has been reinstated.
  - (iii) The case against the issuer entity and the investment banking firm are ongoing.
- f. Importance - May get a judicial determination concerning whether information about an underlying obligor is material to investors in the context of (i) sophisticated institutional investors buying the bonds in a private placement notwithstanding that there was no disclosure of such information, and (ii) disclosure was provided regarding both the State's financial condition and that of the bond insurer.

5. *SEC v. Rangel* (June 21, 2016)

- a. Former President of an Illinois charter school “approved and signed the Official Statement on behalf of [charter school] without reading it to confirm it was complete and accurate.”
- b. Official Statement did not disclose that the charter school had multi-million dollar contracts with two brothers of the school’s COO, and that such conflicts breached grant agreements, which could have resulted in grant moneys being suspended and already-paid grant moneys being recouped
- c. Defendant found to have violated Securities Act §17(a)(2) [negligence] and was barred from engaging in the municipal securities business

6. *In re School Business Consulting; In re Keygent LLC* (June 13, 2016)

- a. School Business Consulting (“SBC”) provided general consulting services to school districts in CA, including recommendations to school district clients on the selection of municipal advisors. SBC entered into a contract with the municipal advisor firm, Keygent, and the principal of SBC went on the Keygent Board. The principal of SBC provided to Keygent confidential information regarding its school district clients that were seeking to hire a municipal advisor, including advance notice of the questions to be asked and the specifics of competitors’ proposals; reviewed Keygent’s pitch books before they were sent to SBC’s clients; and recommended Keygent to SBC’s clients.
- b. SBC securities law violations:
  - (i) SBC was engaged in the “solicitation of a municipal entity” for compensation, and thus was a municipal advisor. **Violated 34 Act §15B(a)(1)(B) for failure to register as a municipal advisor.**
  - (ii) Statutory fiduciary duty established by 34 Act §15B(c)(1)
  - (iii) MSRB Rule G-17 re fair dealing
  - (iv) **34 Act §15B(a)(5), the general antifraud provision applicable to municipal advisors, adopted as part of the Dodd-Frank Act**
- c. Keygent securities law violations:
  - (i) MSRB Rule G-17 re fair dealing
  - (ii) Statutory fiduciary duty established by 34 Act §15B(c)(1)
  - (iii) 34 Act §15B(a)(5)

7. *Town of Ramapo, New York* (Apr. 14, 2016)

- a. Joint criminal indictment (by US Attorney against two Town officials) and SEC Complaint (against the Town, the Local Development Corporation, and four individuals)
- b. **First time there has been a criminal indictment in connection with municipal bond offerings**
- c. Bonds had been issued by the Town, and the Town had guaranteed bonds issued by the Ramapo Local Development Corporation
- d. “They cooked the books of the town’s primary operating fund [General Fund] to falsely depict positive balances between \$1.4 million and \$4.2 million during a six-year period when the town had actually accumulated balance deficits as high as nearly \$14 million” (SEC Press Release)

- e. “a scheme to artificially inflate the balance of the General Fund for at least FY 2009 through FY 2014, by recognizing fraudulent receivables, omitting unpaid liabilities, and improperly recording transfers from other funds with different tax bases.” (SEC Complaint)
- f. Relief sought by the SEC:
  - (i) Require Town and RLDC to retain an independent consultant to review and recommend financial reporting and municipal securities disclosure policies
  - (ii) Require Town and RLDC for a period of five years to retain an auditor not unacceptable to the SEC staff
  - (iii) Prohibit the Town and RLDC for a period of five years from offering municipal securities unless they retain and cooperate with independent Disclosure Counsel
  - (iv) Lifetime ban on four named individuals from ever participating in a municipal bond offering

8. *In re Central States Capital Markets* (Mar. 15, 2016)

- a. Three individuals were concurrently registered reps of a broker-dealer that underwrote bond issues for a municipality and working for a separate firm as a municipal advisor to such municipality
- b. **The municipal advisor firm was found to have violated MSRB Rule G-17** (fair dealing) and paid disgorgement of \$251,650; prejudgment interest of \$38,177.80; and civil money penalty of \$85,000
- c. The three individuals were found to have violated MSRB Rules G-17 and G-23 (by concurrently being financial advisor and underwriter on bond issues). The individuals paid civil money penalties, and were barred from association with a broker-dealer or rating agency with a right to apply for reentry after periods of time ranging from six months to two years

9. *In re Westland Water District, Birmingham, and Ciapponi* (Mar. 9, 2016)

- a. Cease-and-desist order against California agricultural water district, its general manager, and former assistant general manager, based on 17(a)(2) [negligence]
- b. **Civil penalties** of \$125,000, \$50,000, and \$20,000 against district, GM, and asst. GM, respectively
- c. District had covenant to fix and maintain water rates at least sufficient to generate net revenues equal to at least 1.25 debt service coverage. Failure to meet ratio would be technical default on the outstanding bonds.
- d. Due to drought conditions, water district had to purchase water from private rather than less expensive federal sources. 2012 Official Statement included table showing 1.25 coverage was reached for fiscal years 2008-2012, without adequate disclosure regarding how such coverage was achieved.
- e. Debt service coverage met not by raising rates but by reclassifying cash reserves and retained earnings to record additional revenue in lieu of collecting current revenue. Outside auditor had advised that such reclassifications were permissible under accounting guidelines and issued an unqualified opinion. The reclassification and its import on the debt service coverage ratio were not disclosed.
- f. **Compliance with accounting standards is not a defense to disclosures considered to be materially misleading under the federal securities law.**

10. *In re State Street Bank and Trust Company* (Jan. 14, 2016)

- a. An employee of State Street entered into an agreement with the Deputy Treasurer of the State of Ohio to make illicit cash payments and political campaign contributions in exchange for the awarding of custodian contracts
- b. Some of the payments were made through an individual whose law firm was the lobbyist for State Street
- c. Cease-and-desist order against State Street based on a finding of a violation of Rule 10b-5
  - (i) State Street paid a disgorgement penalty of \$4 Million and a civil money penalty of \$8 Million
- d. The lobbyist is challenging the SEC's enforcement action against him on the argument that the abuses were not sufficiently in connection with the purchase or sale of a security

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**Sent:** Sat 3/26/2016 12:10:55 AM  
**Subject:** Standard & Poor's Press Release  
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## Westlands Water District, CA Ratings Removed From CreditWatch, Affirmed After Our Query Into SECEnforcement Action

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SAN FRANCISCO (Standard & Poor's) March 25, 2016--Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs); and
- 'A+' long-term rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, issued for Westlands Water District.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch with negative implications on March 14, 2016, following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Security Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's

extraordinary accounting transactions that were the subject of the proceedings.

"Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as 'vulnerable' and will continue to monitor the district's continuing disclosure practices," said Standard & Poor's credit analyst Chloe Weil. "However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We further believe the district's present financial position remains comparable to that of its peers at the present rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon," Ms. Weil added.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

#### RELATED CRITERIA AND RESEARCH

##### Related Criteria

- USPF Criteria: Rating Methodology And Assumptions For U.S. Municipal Waterworks And Sanitary Sewer Utility Revenue Bonds, Jan. 19, 2016
- USPF Criteria: Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
- USPF Criteria: Assigning Issue Credit Ratings Of Operating Entities, May 20, 2015
- Criteria: Use of CreditWatch And Outlooks, Sept. 14, 2009

##### Related Research

- U.S. State And Local Government Credit Conditions Forecast, Jan. 11, 2016
- U.S. Municipal Water And Sewer Utilities 2014 Sector Outlook: Learning To Do More With Less, Jan. 9, 2014

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of RatingsDirect at [www.globalcreditportal.com](http://www.globalcreditportal.com) and at [www.spcapitaliq.com](http://www.spcapitaliq.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box

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**From:** Tom Birmingham  
**Sent:** Fri 4/8/2016 6:45:30 PM  
**Subject:** FW: S&P Revised Outlook  
[Westlands Water District S&P Report 2016 Review.pdf](#)

Attached is the S&P analysis I referenced in our meeting this morning.

Tom

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## Summary:

Westlands Water District, California  
San Luis & Delta-Mendota Water  
Authority; Joint Criteria; Water/Sewer

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Paul J Dyson, San Francisco (1) 415-371-5079; [paul.dyson@standardandpoors.com](mailto:paul.dyson@standardandpoors.com)

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Related Criteria And Research

## Summary:

# Westlands Water District, California San Luis & Delta-Mendota Water Authority; Joint Criteria; Water/Sewer

Credit Profile		
<b>Westlands Wtr Dist wtr &amp; swr</b>		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch
<b>San Luis &amp; Delta-Mendota Wtr Auth, California</b>		
Westlands Wtr Dist, California		
San Luis & Delta-Mendota Wtr Auth (Westlands Wtr Dist) (BAM)		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

## Rationale

Standard & Poor's Rating Services has removed the following ratings from CreditWatch with negative implications, and affirmed its:

- 'A+' long-term rating and underlying rating (SPUR) on Westlands Water District, Calif.'s existing revenue bonds and certificates of participation (COPs); and
- 'A+' rating on San Luis & Delta-Mendota Water Authority, Calif.'s series 2013A refunding revenue bonds and series 2009A revenue notes, of which Westlands Water District is the guarantor.

The outlook on all bonds is stable.

The district's bonds were placed on CreditWatch following the enforcement action and settlement of the administrative proceeding on March 9, 2016 by the Securities and Exchange Commission (SEC), which charged key management staff and Westlands with misleading investors about the district's financial condition. We understand that in order to meet the district's 1.25x rate covenant in fiscal 2010, Westlands used extraordinary accounting transactions to reclassify certain financial reserves as additional revenue, and without these reclassifications, debt service coverage would have been less than 1.0x, a level we consider insufficient.

Prior to the SEC's action, Standard & Poor's was not aware of the district's extraordinary accounting transaction that were the subject of the proceedings. Based on the district's failure to disclose these actions, we characterize the district's transparency and accountability as "vulnerable" and will continue to monitor the district's continuing disclosure practices. However, upon our investigation of the SEC enforcement action, we find no evidence to indicate that the district has continued to engage in irregular accounting classifications, and we believe it to have been an isolated event. We believe the district's current financial position remains comparable to that of its peers at the current

rating level, and we expect the district's good coverage metrics and strong liquidity to be sustained through the two-year outlook horizon.

The ratings further reflect our assessment of the district's:

- Strong market position as the sole provider of irrigation water in a diverse agricultural area;
- Revised rate structure that enhances revenue stability despite significant increases in supplemental water supply costs and fluctuations in water deliveries from the U.S. Bureau of Reclamation's Central Valley Project (CVP);
- Significant progress on the decades-long dispute with the Bureau of Reclamation regarding drainage-impaired soils in the service territory, although the legal settlement remains subject to congressional approval; and
- Future challenges associated with the procurement of additional raw water sources over the long-term horizon.

The district's service area is in the western portion of the San Joaquin Valley, which is a leading agricultural production region of California and the nation. The valley has been farmed with irrigation water in varying degrees for approximately half a century, and could not exist on its current scale without major water infrastructure programs such as the CVP. The district's service territory spans 614,700 acres of level agricultural land in Fresno and Kings counties, of which 568,500 acres are irrigable, and produces high-value permanent crops, such as almonds and pistachios, as well as tomatoes, grapes, and cantaloupes. The overall customer base is small at about 700 water users, but consists of larger farms that average 800 to 900 acres in size. The customer base also includes 205 municipal and industrial water users, which account for less than 1% of water usage within the district.

Water sales and purchased water costs are the district's primary revenue sources and expenses. The main water source comes from a 1.195 million acre-foot contract entitlement with the U.S. Bureau of Reclamation's CVP. The district serves as the leading provider of imported water to the region. Supply mix can vary significantly from year to year based on CVP allocations, which are driven by hydrology. The annual safe yield of the confined underground aquifer adds another 200,000 acre-feet and local farmers generally extract as much groundwater as possible, but CVP allocations and groundwater supplies have long been inadequate to meet the region's water demand, which is approximately 1.2 million acre-feet. Accordingly, the district is continually engaged in efforts to supplement its water supply from outside sources. In recent years, the district has provided between one-half and two-thirds of all water consumed in the service area through higher-cost supplemental purchases.

As the district's financial performance is hydrology-dependent, the district performs robust financial forecasting and is proactive in maintaining relationships with other water districts and key stakeholders to ensure adequate water transfers, and to that end has been adept at securing regulatory approvals to receive supplemental water.

Weather-normalized, formal historic trend analysis is performed and updated annually for both revenue and expenses; and we believe regular efforts are made to determine whether one or more factors will cause revenues or expenses to deviate from their long-term trends over the next few years. In addition, beginning in fiscal year 2011, to help alleviate the burden on water users for the increased cost of water in short water supply years, the district's board elected to collect half of the operations & maintenance charges through a land-based charge to landowners rather than through the water rate.

On Sept. 15, 2015, the U.S. Department of Justice and Westlands approved a settlement ending a decades-long dispute over the Bureau of Reclamation's responsibility to provide drainage for the farmland within Westlands. The drainage



settlement requires Westlands to assume full responsibility for drainage management within its boundaries, and will cap CVP deliveries at 75% of the district's contract entitlement. Furthermore, Westlands will be required to retire a minimum of 100,000 acres of land and to repurpose the non-irrigated lands for environmentally friendly uses. We view the settlement as manageable as the district has already acquired 90,000 acres of land for this purpose. The district also has over \$40 million in designated reserves that could be used to meet the remaining requirements under the settlement.

The district's financial performance has been sound in our view over the past five years, despite the impact of the ongoing drought on the district's water supply. Senior lien debt service coverage (DSC) improved to 2.1x in fiscal 2015 from 1.8x in fiscal 2014, while all-in DSC, which adjusts for the district's fixed charges included in operating expenses, the district's subordinated lien obligations, and the impact of one-time land sales on revenues, improved to 1.6x from 1.2x, which we consider good. Based on unaudited results, we expect all-in DSC in fiscal 2016 to remain strong, at about 1.7x, excluding one-time land sales. Based on management's forecast, we expect all-in DSC to decline to about 1.0x in fiscal 2017, which we consider adequate at the current rating level. With a debt-to-capitalization ratio of about 55% as of February 28, 2015, we consider the district to be moderately leveraged.

The district's liquidity position is strong, in our view. The district's cash and cash equivalents as of Feb. 29, 2016 (unaudited) was \$102 million, which represented 314 days' of operating expenses. We understand that the district maintains a strong liquidity position, in part to enable it to opportunistically acquire water rights or otherwise firm up its water supply.

The proposed California WaterFix (the revised approach to the Bay Delta Conservation Plan), a comprehensive plan for the Bay-Delta to address environmental and water supply issues, if adopted and implemented, would entail substantial infrastructure investment in the Delta and implementation of other conservation measures. The capital costs associated with this project will likely be large--most recently estimated at \$14.6 billion, and the district estimates that its proportionate share would be about \$2.4 billion. However, we recognize that the method for financing the project has not been established, and the district has no obligation to fund these future costs. However, we believe that substantial increases in the district's land-based charges and CVP water rates will be necessary to cover the district's (yet to be determined) share of the planned Bay Delta improvements. Even so, we believe that the CVP water may remain the district's lowest cost source of water, and is critical to support the region's agricultural output.

## Outlook

The stable outlook reflects our view of the district's competitive position as the leading provider of supplemental water to a region with strong water demand and scarce water resources. During the two-year outlook period, we anticipate that the district will continue to sustain its good coverage metrics and extremely strong liquidity position while managing its water supply. We also expect the district to finalize its plans regarding the drainage settlement and that the district currently has ample capital funding capacity to execute the requirements under the agreement.

### Upside scenario

Although not anticipated, due to the district's service territory characteristics and potential shifts in the water supply portfolio, we may raise the ratings if the district is able to stabilize and sustain strong coverage metrics and if the local

service economy strengthens and diversifies such that its characteristics are comparable to those of peers at a higher rating level.

#### Downside scenario

We may lower the ratings if changes to the water supply portfolio or unexpected capital needs cause the district's financial metrics to materially erode.

## Related Criteria And Research

#### Related Criteria

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- USPFCriteria: Methodology: Definitions And Related Analytic Practices For Covenant And Payment Provisions In U.S. Public Finance Revenue Obligations, Nov. 29, 2011
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- Criteria: Use of Credit Watch And Outlooks, Sept. 14, 2009

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- U.S. Municipal Water And Sewer Utilities 2014 Sector Outlook: Learning To Do More With Less, Jan. 9, 2014

Ratings Detail (As Of March 28, 2016)		
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<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from Credit Watch
Westlands Wtr Dist (Westlands Wtr Dist) JOINT CRIT		
<i>Long Term Rating</i>	AAA/A-1	Current
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from Credit Watch
Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from Credit Watch

Many issues are enhanced by bond insurance.

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of Ratings Direct at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

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**To:** Michelle Ostrowski[mostrowski@westlandswater.org]  
**From:** Tom Birmingham  
**Sent:** Tue 3/29/2016 10:58:36 PM  
**Subject:** Fwd: S&P Revised Outlook

[image001.jpg](#)

[Untitled attachment 11545.htm](#)

[Westlands Water District S&P Report 2016 Review.pdf](#)

[Untitled attachment 11548.htm](#)

FYI

Sent from my iPhone

Begin forwarded message:

**From:** "Weil, Chloe" <[chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)>  
**Date:** March 28, 2016 at 4:48:32 PM PDT  
**To:** Bobbie Ormonde <[bormonde@westlandswater.org](mailto:bormonde@westlandswater.org)>  
**Cc:** 'Dan Pope' <[dpope@westlandswater.org](mailto:dpope@westlandswater.org)>, "[david.houston@citi.com](mailto:david.houston@citi.com)" <[david.houston@citi.com](mailto:david.houston@citi.com)>, "Brown, Douglas S.'" <[DBROWN@SYCR.com](mailto:DBROWN@SYCR.com)>, "[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)" <[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)>, "Dyson, Paul" <[paul.dyson@standardandpoors.com](mailto:paul.dyson@standardandpoors.com)>  
**Subject:** RE: S&P Revised Outlook

Final report attached. Thank you,

Chloe Weil  
Standard and Poor's  
415-371-5026

---

**From:** Bobbie Ormonde [<mailto:bormonde@westlandswater.org>]  
**Sent:** Monday, March 28, 2016 2:40 PM  
**To:** Weil, Chloe (Analytical)  
**Cc:** 'Dan Pope'; [david.houston@citi.com](mailto:david.houston@citi.com); 'Brown, Douglas S.'; [tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org); Dyson, Paul (Analytical)  
**Subject:** RE: S&P Revised Outlook

Chloe,

I left you a voice message. Could you please call me when you have moment to discuss our comments?

Bobbie Ormonde  
Director of Finance and Administration  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 93703  
(559) 241-6203

---

**From:** Weil, Chloe [<mailto:chloe.weil@standardandpoors.com>]  
**Sent:** Monday, March 28, 2016 12:25 PM  
**To:** Bobbie Ormonde  
**Cc:** 'Dan Pope'; [david.houston@citi.com](mailto:david.houston@citi.com); 'Brown, Douglas S.'; [tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org); Dyson, Paul  
**Subject:** RE: S&P Revised Outlook

Good afternoon—

We are sending you this draft report so that you can call our attention to any factual errors or the inadvertent inclusion of confidential information in the draft. In particular, could you please confirm the amount of CVP and supplemental water deliveries in fiscals 2013 – 2015?

If you have any questions or comments on the analysis that are not factual in nature, we ask that you discuss these matters with us. We will use our sole discretion in making editorial changes to the document, which represents our independent opinion. We typically finalize and release our report after a period of approximately two (2) hours from the time we have sent this email regardless of whether we have received a reply. The report will supersede the information in the draft; the information in the draft is confidential and remains confidential after the issuance of a report and should not be disclosed or released at any time before or after the report is published.

Could you please send comments back to me by close of business today? Please let me know as soon as possible if you will be unable to meet this deadline.

Per policy, if multiple persons are reviewing this draft, we kindly ask that one person consolidate corrections from others into one document or email prior to sending back to us. We cannot accept multiple drafts or emails (with corrections) back in return.

Regards,

Chloe

Chloe Weil  
Standard and Poor's  
415-371-5026

---

**From:** Weil, Chloe (Analytical)  
**Sent:** Friday, March 25, 2016 1:04 PM  
**To:** 'Bobbie Ormonde'  
**Cc:** 'Dan Pope'; '[david.houston@citi.com](mailto:david.houston@citi.com)'; 'Brown, Douglas S.'; '[tbirmingham@westlandswater.org](mailto:tbirmingham@westlandswater.org)'; Dyson, Paul (Analytical)  
**Subject:** S&P Revised Outlook

Bobbie—

We appreciate the assistance you provided getting the information we needed to conduct our review.

I am attaching a copy of the press release regarding the outlook change that was released this morning. I will send you a draft of the full report to review for factual accuracy on Monday.

Happy Easter to all who celebrate.

Regards,  
Chloe

# RatingsDirect®

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## Summary:

Westlands Water District, California  
San Luis & Delta-Mendota Water  
Authority; Joint Criteria; Water/Sewer

### Primary Credit Analyst:

Chloe S Weil, San Francisco (1) 415-371-5026; [chloe.weil@standardandpoors.com](mailto:chloe.weil@standardandpoors.com)

### Secondary Contact:

Paul J Dyson, San Francisco (1) 415-371-5079; [paul.dyson@standardandpoors.com](mailto:paul.dyson@standardandpoors.com)

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## Outlook

The stable outlook reflects our view of the district's competitive position as the leading provider of supplemental water to a region with strong water demand and scarce water resources. During the two-year outlook period, we anticipate that the district will continue to sustain its good coverage metrics and extremely strong liquidity position while managing its water supply. We also expect the district to finalize its plans regarding the drainage settlement and that the district currently has ample capital funding capacity to execute the requirements under the agreement.

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Westlands Wtr Dist Wtr & Swr rev certs of part		
<i>Unenhanced Rating</i>	A+(SPUR)/Stable	Affirmed, Removed from CreditWatch

Many issues are enhanced by bond insurance.

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at [www.standardandpoors.com](http://www.standardandpoors.com) for further information. Complete ratings information is available to subscribers of Ratings Direct at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column.

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***June 15, 2016***

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## **ARTICLES:**

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### **San Francisco Chronicle**

#### **Delta smelt on the brink**

By [Peter Fimrite](#)

June 15, 2016 Updated: June 15, 2016 7:00am

The fight to save the delta smelt, the beleaguered fish at the center of an increasingly bitter tug-of-war over water rights in the Sacramento-San Joaquin River Delta, is as close to a lost cause as ever, but fisheries biologists vow to continue the struggle to protect the species.

There are only about 13,000 endangered delta smelt remaining in the estuary this year, the lowest number in recorded history, according to estimates released last week by the U.S. Fish and Wildlife Service. It means a fish that for thousands of years could be found only in the delta is perilously close to extinction.

“It’s a very small number of fish,” said Steve Martarano, spokesman for the Bay-Delta office of the Fish and Wildlife Service. “They have a life cycle of about a year, so to have that low of a number in a body of water as large as the bay delta is very alarming.”

The population this year is well below last year’s estimate of 112,000 fish, the previous record low. Martarano said the yearly counts, which are extrapolations based on the state’s annual spring trawling surveys, go back to 2002, when there were 597,000 smelt.

### **Bad news in wet year**

The fact that the recent drop-off happened during a relatively wet year, the kind that in previous years had prompted smelt populations to rebound, is troubling, said Peter Moyle, a professor of fish biology at UC Davis.

“Obviously, the drought hasn’t helped. It’s clearly made conditions worse,” said Moyle, who has studied the tiny fish for more than 40 years and is the foremost expert on the species. “But we had wet times this year and that should have delivered food and plankton. We would have expected delta smelt to do better in a year like this, but it doesn’t seem to have happened.”

The low numbers are particularly chilling, he said, given the cumulative decline over the past 30 years. The number of smelt, which were listed as endangered by the federal government in 2010, dipped below 500,000 for the first time in 2005 and remained below that 11 of the past 12 years. The exception was 2012, when the smelt population climbed to 623,000 following an extremely wet year, according to the department.

At stake is a 2- to 3-inch long fish that has adapted over eons to the shifting currents, brackish water and converging rivers in the vast 1,100-square-mile network of channels, islands and marshes known as the California Delta. There were once a million or more of the silver-colored fish in the delta and Suisun Marsh, by far the most plentiful fish in the region.

### **Year-long life span**

Smelt swim only in bursts to get to locations where they can drift with the currents and feed, according to experts. They live for about a year, spawn and their larvae then drift down to Suisun Bay, where they grow and repeat the cycle.

### **THE DECLINE OF DELTA SMELT**

The year-by-year estimates by the U.S. Fish and Wildlife Service were calculated for the first time this year. The numbers, which are based on state survey data, are subject to change upon further analysis:

2002: 597,000

2003: 519,000

2004: 527,000

2005: 385,000

2006: 151,000

2007: 235,000

2008: 262,000

2009: 295,000

2010: 134,000

2011: 234,000

2012: 623,000

2013: 171,000

2014: 167,000

2015: 112,000

2016: 13,000

They are, said Moyle, an “indicator species,” like the proverbial canary in the coal mine — a crucial gauge of the ecological health of the region. Their population nosedive is a signal that the delta ecosystem is not doing well, he said. Their absence diminishes the food supply for larger fish and birds.

“The entire delta has changed so much since they started diverting water that there has been a gradual change in the overall habitat,” Moyle said.

The smelt problem is both complicated and controversial. Environmentalists blame the vast federal and state water distribution system, which sucks water out of the delta and provides drinking and irrigation water for some 30 million Californians from the Bay Area, throughout the San Joaquin Valley and in Southern California.

### **Problem pumps?**

They say the huge Tracy-area pumps suck in and kill smelt and even cause portions of the San Joaquin River to flow backward, confusing the migrating fish. Experts on smelt have long pushed for restoration of the tidal marshes and increased freshwater flows down the river.

The problem is that the water flowing into the delta is used to irrigate some 3 million acres of farmland, and the agricultural industry is more concerned about their crops than the fish.

The federal government enacted rules in 2008 that curtailed water exports during times of the year when delta smelt are spawning and larvae and juveniles are present. Agriculture industry representatives and politicians have since complained that farms are being starved of water to protect a “worthless minnow.”

Gov. Jerry Brown hoped his twin-tunnels plan would resolve the issue by skirting the delta, but the pipeline bypass has itself been mired in controversy.

And the delta’s signature minnow isn’t the only fish suffering as politicians and interest groups jockey for position at the front of the trough. The decline of the smelt follows an announcement by the National Marine Fisheries Service that 95 percent of the winter-run chinook hatchlings died last year in the Sacramento River, which was too warm to support them.

It was the second year in a row that millions of fish didn’t make it out of the river, which was plagued by a lack of snowmelt after four years of drought. Other fish, including longfin smelt, threadfin shad and the historic runs of adult chinook salmon, also are struggling, according to biologists.



Moyle said invasive predators have further depleted smelt populations. The overbite clam, which eats the plankton that smelt need, and the Mississippi silverside, which is a voracious predator of small fish, are just two of the aliens that have smitten the smelt, he said.

### **Epecially vulnerable**

The slumping smelt numbers this year can only mean that the regulations curtailing water deliveries and other efforts to save the fish haven't worked. The fear now is that a pesticide spill or oxygen-sucking algae bloom that in the past wouldn't have been a big deal could kill off all the remaining fish.

It is still possible to preserve the fish, Moyle said, but only if people stop bickering and come together to restore some of the ancient marsh habitat and develop water solutions that don't involve more dams and pumping. Smelt are now being raised at the UC Davis Fish Conservation and Culture Laboratory, near Byron, where scientists hope to keep the species alive until the delta can be restored and the fish can be reintroduced.

"The situation I can't say is completely hopeless. We do know that if you can create appropriate conditions in the delta they can survive," Moyle said. "But with a downward trend like this, it is hard to be too optimistic about the long-term future."

*Peter Fimrite is a San Francisco Chronicle staff writer. Email: [pfimrite@sfgchronicle.com](mailto:pfimrite@sfgchronicle.com) Twitter: [pfimrite](https://twitter.com/pfimrite)*

## **Ag Alert**

### **Fishery decisions could help, harm water supplies**

**Issue Date:** [June 15, 2016](#)

**By Kate Campbell**

Two developments in recent days outlined alternative strategies for protecting fish whose populations drive water-allocation decisions for much of California: A coalition of business and water groups petitioned the state to address a key predator of native fish, while members of Congress asked federal agencies not to force additional water-supply cutbacks on the species' behalf.

The petition from the business/water coalition asks the California Fish and Game Commission to allow more fishing for the striped bass and black bass, non-native species that feed on endangered chinook salmon and delta smelt in the Sacramento-San Joaquin Delta. If granted, the petition would permit more black bass and striped bass to be taken, and reduce the minimum size of the fish that could be legally caught.

Predation has long been recognized as one of many factors causing decline of native delta fish species, said Chris Scheuring, an environmental attorney for the California Farm Bureau Federation. CFBF is part of the coalition that filed the petition.

"There are many sources of stress in the system," Scheuring said. "Simply manipulating water flows is not the entire story when it comes to promoting healthy species. There are predators, food supply issues, invasive plant species, compromised oxygen levels—a range of environmental issues."

Predation ranks among the top dangers to Central Valley spring-run chinook salmon, Central Valley steelhead and Sacramento River winter-run chinook salmon in threat assessments conducted by the National Marine Fisheries Service.

In addition to CFBF, the coalition involved in the petition includes the California Chamber of Commerce, Coalition for a Sustainable Delta, Kern County Water Agency, Metropolitan Water District of Southern California, Northern California Water Association, San Joaquin Tributaries Authority, Southern California Water Committee, State Water Contractors and Western Growers.

"The protection of native threatened and endangered fish should be the top priority of the commission," said David Guy of the Northern California Water Association. "The ongoing management of non-native, predatory game species needs to be carefully rethought if we're serious about recovering salmon in California."

Scheuring said basing decisions on the health of individual species leads to conflicting demands for water resources and unachievable goals, adding, "There just isn't enough water in the system to chase every idea we have about every listed species. We need an integrated, multi-layered approach to fisheries and habitat, based on science."

Concerned that federal agencies might be taking or contemplating actions that would further cut water supplies for farms and cities this year, 15 members of the California congressional delegation sent a letter last week to the secretaries of the U.S. Interior and Commerce departments, warning that the actions would amount to "an overreach" and have "devastating effects" on the state.

"We understand both FWS (U.S. Fish and Wildlife Service) and NMFS (National Marine Fisheries Service) are now proposing separate, contradictory actions that will significantly reduce the water supply to Californians," the members of Congress said in their joint letter.

Although federal officials and the State Water Resources Control Board agreed in March to releases of 10,500 cubic feet per second from Lake Shasta, the members of Congress said they understood NMFS wants to reduce Shasta releases to 8,000 cfs. The letter noted this discussion of further water cuts comes after many crops have been planted, production loans have been secured and farm water budgets finalized.

"We understand the concern about the winter-run salmon, but NMFS's proposed action is now serving to provide layer upon layer of (species) protection with little measureable return," the California congressional representatives said.

If the further reductions are ordered, water districts estimate the change would cost the Central Valley Project 400,000 acre-feet of water. The congressional letter said this would leave water contractors north and south of the delta in an unexpectedly short water supply situation, including the San Joaquin River Exchange Contractors, the Tehama-Colusa Canal Authority and wetlands in the San Joaquin Valley.

At the same time NMFS aims to reduce delta outflow through the summer, FWS proposes to increase it, the congressional letter said, requesting to purchase 300,000 acre-feet of water on behalf of delta smelt.

"Our rivers have been called upon to serve too many masters," Scheuring said, "particularly as development of new supply options has greatly slowed for more than a generation. At the same time, environmental demands and continuing urban expansion have been overlaid onto our water supply framework. The Endangered Species Act in particular has proven an increasing constraint on other beneficial uses of water, and has simply not been workable in managing water systems in the West."

Erin Huston, CFBF federal policy consultant in Washington, D.C., said she is closely monitoring discussions among the agencies and state congressional leaders.

"These talks about further water supply cuts come at a time when it seemed Californians might experience some relief from water restrictions and supply cuts," Huston said. "But we are again experiencing cross-purposes in a time of short water supplies—if it's not one species, it's another."

During the past few months, water analysts say restrictions on the federal and state water transfer pumps in the delta have resulted in more than 1 million acre-feet of water flowing uncaptured to the ocean, as part of efforts to protect endangered and threatened species. However, they said, increased flows during the past decade have not solved the problem, as populations of endangered salmon and smelt continue to decline.

(Kate Campbell is an assistant editor of Ag Alert. She may be contacted at [kcampbell@cfbf.com](mailto:kcampbell@cfbf.com).)

## Capital Press

### Groups petition state to address predatory fish in Delta

Tim Hearden

#### Capital Press

Published on June 14, 2016 2:25PM

SACRAMENTO — Two farm groups have joined a broad coalition that wants the state Fish and Game Commission to address the issue of non-native, predatory fish in the Sacramento-San Joaquin River Delta.

The California Farm Bureau Federation and Western Growers have teamed with water districts and conservation groups to petition the state body, asking that fishing controls for several types of bass be loosened or lifted.

The groups say invasive black bass, striped bass and other predators are feeding on threatened and endangered salmon and smelt, which are native to the Delta region. From the farm groups' perspective, solving the predation problem could lead to the easing of pumping restrictions that have deprived growers of needed surface water in recent years, said Cory Lunde, Western Growers' director of strategic initiatives and communications.

"Obviously our primary interest is seeing that our farmers in the San Joaquin Valley receive adequate supplies of water to water their crops," Lunde said. "We're asking that the government consider other stresses impacting the health of smelt and salmon populations and not just resort to turning down the pumps."

Other petitioners include the Coalition for a Sustainable Delta, the California Chamber of Commerce, the Metropolitan Water District of Southern California, the San Joaquin Tributaries Authority, the State Water Contractors and other water agencies and organizations.

Fish and Game Commission officials did not return a call from the Capital Press seeking comment about the petition.

Michael Boccadoro, a spokesman for the Coalition for a Sustainable Delta, said he expects the commission to take up the petition at a future meeting and direct employees to study alternatives.

"This is a process that the commission has put in place to address these sorts of issues," Boccadoro said. "Ultimately it's up to the commission."

Predation has been named as a factor in the continued decline of imperiled fish such as winter-run chinook salmon and Delta smelt. Despite the tiny fish's federal listing in 1993, a key index for smelt abundance hit zero last year for the first time since the survey began in 1959. Surveys for the smelt this year have found fewer than a dozen fish.

The smelt and salmon have been at the center of bitter water fights among farmers, cities, fishing groups and environmentalists for two decades. The discord escalated during the drought, as no federal water was made available to south-of-Delta farms lacking senior water rights in 2014 and 2015.

The petitioners point to efforts that are already in place to protect endangered salmon and steelhead populations in the Columbia River from being preyed on by non-native bass, walleye and catfish. The Washington and Oregon fish and wildlife agencies removed size and bag limits of the predators.

The groups want California to take a similar measure while also implementing a comprehensive monitoring program to learn more about the predation problem and make adjustments as needed.

"They have to," Boccadoro said. "All the other Western states, at the peak of the drought last year, took action to address predation. As native species are in decline, if the state isn't taking all the steps they need to take to protect species, we're going to have issues."

## 89.3 KPPC

### Do Southern California water wholesalers have enough supply for 3 more years of drought?

[Emily Guerin](#)

June 14, 01:00 PM

Wednesday will be a day of reckoning for California water wholesalers like Southern California's Metropolitan Water District (MWD). They have to prove to the state that they have enough water to get through three more years of drought. If they don't, they need to figure out how much they need to save. It's a big change from the way the state was regulating water just a month ago. Let's break it down.

#### WHAT'S DIFFERENT?

Well, to put it simply, rain.

2015 was the driest year in 500 years. And last spring, Governor Jerry Brown ordered cities to collectively cut their water use by 25 percent — the first urban water restrictions ever in state history.

But this winter it rained and — more importantly — it snowed. And the state's most important reservoirs in Northern California filled up. Southern California gets a lot of its water from Lake Oroville. Because of that, the state water board was under a lot of pressure to relax the mandatory water restrictions.

#### ARE WATER AGENCIES GOING TO BE CONSERVING WATER AT ALL ANYMORE?

Yeah, they are. The difference is that this time around the state isn't telling them how much they have to conserve. They're deciding. They have to prove they have enough water to make it through three more dry years.

The state has given them a calculation that takes into account projected supplies and demand. If at the end of the three years, the calculation indicates they're going to be short, they'll have to start conserving now to make sure they'll have enough. If it looks like they'll have some water left over, they won't have to conserve.

We'll hear from the wholesalers — like MWD — on Wednesday. And then the individual water agencies — like the L.A. Department of Water and Power — that buy from MWD next week. But if MWD works out its calculations and finds it doesn't have to conserve, that might mean that the water agencies that are its customers might not have to either.

SO I CAN GO BACK TO WATERING MY LAWN IN THE RAIN AND SPRAYING DOWN MY SIDEWALK?

Nope, there's now a permanent statewide ban on wasteful uses of water. And the state water board is hoping water agencies will encourage their customers to continue cutting back, even if they don't impose mandatory conservation targets.

But Tracy Quinn with Natural Resources Defense Council is skeptical. She says voluntary conservation is simply not as effective as mandatory restrictions. She points to what happened in 2014, when Governor Jerry Brown asked for a 20 percent voluntary statewide reduction in water use that was only met once.

"We're still in an emergency drought situation," Quinn said. "Messages like, 'we're relaxing conservation standards or in some parts of the state eliminating them all together,' are really worrisome."

Quinn said she will be looking closely at water agencies' plans to make sure they are being realistic about their water supplies.

WHAT HAPPENS IF THEY'RE NOT REALISTIC?

The state water board has made it clear that it has the right to re-institute mandatory water restrictions if it thinks individual water agencies aren't doing a good job managing their supplies.

Individual water agencies' plans are due on June 22, and water board staff will be looking closely to make sure they can provide the water they say they can.

## Daily Republic

### Solano supervisors mock twin tunnels video, plan

By Todd R. Hansen From page A1 | June 15, 2016

FAIRFIELD — Solano County supervisors smirked, shook their heads in disbelief and one called a short video on Gov. Jerry Brown's twin-tunnel water transfer proposal "a joke."

The board on Tuesday watched the short video produced by the state describing the benefits of what the state calls the California Water Fix and EcoRestore, the central piece of which is the proposed \$15 billion tunnels that would divert river water from the north under the Delta and into a holding pond to the south.

The water would then be pumped to its various agricultural, environmental and urban users, state documents report.

"What a joke," uttered Supervisor Skip Thomson, who suggested that if anyone was buying the video's message he also has a bridge to sell.

The tunnels, buried 150 feet below ground and running about 30 miles from the Sacramento River intake to the holding pond to the south, would operate by gravity.

Proponents note that the project eliminates the state and federal pumps at the Delta, which in turn would stop the pumping of salt water into the system. They also argue it would protect fish and improve other environmental concerns, be more earthquake safe and provide a more reliable source of water and therefore protect jobs and other economic concerns in the Central Valley and to the south.

“No one will get more water. No one will get less water,” the video states.

While Solano County officials are concerned about what they clearly thought is misleading information that is in the video, they are even more concerned about what is not in the production.

“No mention of impacts on the Delta region,” is one comment in the report given to the supervisors. Another was, “No mention of impacts to Delta water quality.”

The quality issue is largely a concern because there would be less river water coming through the Delta to help flush the out the tidal salinity.

The report calls the video “selective” in its background information, while omitting environmental details, engineering, cost, cost recovery and local economic impacts.

Some officials have said the proposal will be “devastating” to Solano County and the Bay Area as a whole.

Roberta Goulart, a consultant on the issue, said the county staff is still waiting to see the final documents from the state, which will include their responses to comments on the environmental impact studies.

There is already legislation and preliminary litigation efforts to stop, or at least slow the tunnels project from moving forward.

The report to the board also stated that there are other water-conveyance alternatives that are less costly and are more efficient.

Those proposals typically call for additional surface water storage, development of new water sources such as desalination and improving levee reliability, according to a variety of news and organizational sources.

One even includes a proposal with a single tunnel.

*Reach Todd R. Hansen at 427-6932 or [thansen@dailyrepublic.net](mailto:thansen@dailyrepublic.net).*

## OPINION/COMMENTARY

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## The Fresno Bee

### Westlands plays it fast and loose

JUNE 14, 2016 1:17 PM

Westlands Water District's managers just can't seem to help themselves. The district, along with the general manager and a former treasurer, were [fined \\$125,000, \\$50,000 and \\$20,000, respectively, by the SEC](#) for playing fast and loose with accounting procedures in the issuance of \$77 million in revenue bonds.

In addition, the CALPERS Office of Audit Services performed an audit in 2013 on retirement benefits afforded district personnel. Before retirement in 2009, an individual had worked for the district as deputy general manager at \$55.29 per hour. Ten days after retirement, this individual was rehired to perform the same duties, at an increase to \$75 per hour. In another instance, an assistant general manager was granted an 18 percent increase in salary five months before retirement. Sweet deals, but in both cases OAS determined that these retirement benefit arrangements did not comply with government codes.

The sweetest deal of all is the recently revealed [\\$1.4 million loan at 0.84 percent interest rate in 2007](#) to a deputy general manager who no longer works for the district but still owes for the loan. Wouldn't it be nice if farmers in the district had access to district loans when drilling their next wells?

*DON BUSH, FRESNO*

## Water Deeply

### Reducing Reliance on the Bay-Delta

Should more water be diverted from the Delta? The state already decided this years ago with the Delta Plan, writes Kate Poole, senior attorney at the Natural Resources Defense Council.

WRITTEN BYKate Poole	PUBLISHED ONσ Jun. 15, 2016	READ TIMEApprox. 5 minutes
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**CALIFORNIA'S DROUGHT** – or lack thereof, according to some – has made national headlines again, prompting suggestions from many quarters on whether we need to divert more or less water from the San Francisco Bay-Delta estuary in response. Some of these suggestions reflect a basic understanding of California's complex water system. Many don't. But almost all of the recent debates seem to overlook one crucial and fundamental fact about California's water future and the Bay-Delta ecosystem that serves as the switching yard for the state's massive water projects: The state has already answered the question.

In 2009, California's legislature reached agreement on how to resolve the seemingly endless Delta debates that dominate state water politics, and Governor Schwarzenegger passed that agreement into law. Elegant in its simplicity but profound in its direction, the agreement states (as codified in [section 85021 of the Water Code](#)):

"The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects and improved regional coordination of local and regional water supply efforts."

Plain and simple: In order to fix the Delta, we have to take less water from the Delta, and invest in regional water supplies for our future water security. Like the Sustainable Groundwater Management Act that passed in 2014, the passage of the Delta Reform Act in 2009 with its “reduced reliance” policy resolved a decades-long debate over how to manage a key statewide water asset for the future. And as with the Sustainable Groundwater Management Act, the challenge now is not figuring out what to do, but actually doing it – following through on the statewide directive to reduce reliance on the Delta and giving it meaning where it counts, on the ground.

Of course, some water buffaloes have repeatedly rejected the idea that this law requires reducing water diversions from the estuary, employing their most creative sophistry to claim that it is only a policy, or that it addresses only “future” demands for water or that it should apply only in some far-off future.

Last month, a state court judge strongly rejected their arguments in challenges to the Delta Plan, explaining that, “The plain language of section 85021 requires all water supply needs beyond the date of its adoption to be balanced, and reduced reliance must be a part of this balancing.”

In other words, diverters need to take less water from the Delta in the future than they did in 2009 when the reduced reliance directive became law. The court’s decision also provided very helpful direction on implementing this directive, requiring the state to revise the Delta Plan to include “quantified or otherwise measurable targets” for achieving reduced Delta reliance, meaning “numeric goals that will be evaluated at a date certain to determine compliance or the measure of progress that has been accomplished.”

So what are the implications of this ruling? The Delta Plan is a long-term management plan for the Delta and the actions of public agencies must be consistent with it when implementing projects in the Delta. If, for example, the Department of Water Resources (DWR) wants to build two massive tunnels to divert more water from the Delta, the agency must demonstrate that the project will reduce reliance on the Delta and will be consistent with the plan’s targets for reducing reliance on the Delta.

Since DWR’s current proposal for the twin tunnels would increase water exported from the Delta over average export levels in 2009, the agency is not currently on track to demonstrate consistency with the Delta Plan. Indeed, the 25-page appendix from the 2013 Bay Delta Conservation Plan entitled “BDCP Compliance with the 2009 Delta Reform Act” does not include either the word “reliance” or section “85021” and as the Natural Resources Defense Council (NRDC) noted in our 2015 comments on WaterFix, the 2015 Revised Draft Environmental Impact Report likewise ignores the Delta Reform Act’s requirement to reduce reliance on the Delta.

In fact, the state perversely argues in those 2015 environmental documents that alternatives which substantially reduce diversions from the Delta (consistent with the best available science) are inconsistent with the purpose and need for the tunnels project, turning the reduced reliance directive upside-down.

Similarly, these clarifications should put to rest the arguments of many Delta exporters and their proxies that reducing reliance on the Delta, as required by state law, somehow does not apply to them. For example, shortly before the court issued its decision, the Metropolitan Water District of Southern California (MWD) rejected NRDC’s comment on MWD’s draft 2016 Urban Water Management Plan that the agency should develop a plan for local water supply investment that assumes it will receive less water exported from the Delta in the future than it has in the past. MWD responded that, “Section 85021 is a policy statement and does not require Metropolitan to reduce SWP imports.”

In broader terms, the ruling should serve as a stark reminder to policymakers that California has already chosen its path for resolving the Delta debates, and the path is to reduce diversions from the Delta and invest in more sustainable regional tools, such as improved water use efficiency, water recycling, stormwater capture and more. This is the suite of water management tools that Governor Brown endorsed in his California Water Action Plan, and that NRDC and the



Pacific Institute found could generate up to 14 million acre-feet (17.2 billion cubic meters) annually in new water supplies and reduced water demands.

Ill-advised proposals from some in Congress and constant calls from water exporters about how to squeeze ever more water out of the Delta are clearly contrary to this path. As the Chronicle editorial board noted, "If anything, these efforts threaten to derail what progress the state has made toward establishing rational rules to share a diminishing resource in a warming world. The state's Water Action Plan has set out broad priorities for water use and is letting local water interests take up the hard and necessary work of hammering out rational, reasonable water rules. What's needed now is a statewide commitment to allocate – up front – water for the environment."

It's time to stop rehashing the wise decision that California has already made to take less water from the overtapped Delta and invest in 21st-century water management tools as the right path to prepare for a climate-changed future that can sustain a healthy economy, environment and growing population. Let's move beyond the tired old debate and get down to the business of implementing.

*The views expressed in this article belong to the author and do not necessarily reflect the editorial policy of Water Deeply.*

## BLOGS

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### Daily Kos

#### Greenwashing Extinction 2016: The Clear Links between Delta Tunnels Plan and MLPA Initiative

By Dan Bacher

Tuesday Jun 14, 2016 · 9:58 AM PDT

One of the least discussed issues in California environmental politics – and one of the most crucial to understanding Jerry Brown's Delta Tunnels plan - is the clear connection between the Marine Life Protection Act (MLPA) Initiative and the California WaterFix, formerly called the Bay Delta Conservation Plan (BDCP).

The privately-funded MLPA Initiative and the California WaterFix to build the peripheral tunnels at first may appear to be entirely different processes.

The MLPA Initiative, a process begun in 2004 under the Schwarzenegger administration, purported to create a network of "marine protected areas" along the California coast. The network was supposedly completed on December 19, 2012 with the imposition of widely-contested "marine protected areas" along the North Coast.

On the other hand, the Bay Delta Conservation Plan process began under the Bush and Schwarzenegger administrations to achieve the so-called "co-equal goals" of water supply reliability and Delta ecosystem restoration. In 2015, the state and federal governments divided the BDCP into two projects, the California WaterFix, the conveyance component and the California EcoRestore, the habitat "restoration" component.

But in spite of some superficial differences, the two processes are united by their leadership, funding, greenwashing goals, racism and denial of tribal rights, junk science and numerous conflicts of interest. When people educate themselves on the links between the two processes, I believe they can more effectively wage a successful campaign against the Delta Tunnels and to restore our imperiled salmon and San Francisco Bay-Delta fisheries.

Mike Carpenter, a sea urchin diver and organizer of a fundraiser for the California Fisheries Coalition in Albion on the Mendocino coast, made the vital connection between the MLPA Initiative and Schwarzenegger's campaign to build a peripheral canal back in 2009 when the battle against the creation of questionable "marine protected areas" on the North Coast was amping up.

Carpenter emphasized that the MLPA Initiative was just a "cover-up" for the Governor's plans to build a peripheral canal or tunnel around the California Delta, the largest estuary on the West Coast of the Americas, through the Delta Vision and Bay Delta Conservation Plan (BDCP) process. Carpenter's words have proven very prophetic, considering what has happened since that time.

How are the Delta Tunnels plan and MLPA process linked by leadership, funding, conflicts of interest, greenwashing goals, racism and denial of tribal rights, and junk science?

**1. Leadership:** Phil Isenberg, a former Sacramento Mayor and Assemblyman, chaired the MLPA Blue Ribbon Task Force to create fake "marine protected areas" on the Central Coast from 2004 to 2007. Isenberg then went on to Chair the Delta Vision Blue Ribbon Task Force that advocated building a peripheral canal or tunnel.

After that process was finished, he went on to chair the Delta Stewardship Council created under the water policy/water bond legislative package of 2009. He recently retired from the Council.

Under his leadership, the Council released a Delta Plan that creates a clear path to the construction of the Delta Tunnels. The deeply-flawed plan has been contested in by 7 lawsuits from a diverse array of water contractors, agribusiness interests, urban water agencies, environmentalists, Indian Tribes and fishing groups.

Likewise, John Laird, former State Senator and the current Natural Resources Secretary, is the key cheerleader for both the MLPA Initiative and the Delta Tunnels. He oversaw the completion of the faux "marine protected areas" for both the South Coast in January 2012 and the North Coast on December 2012, in spite of overwhelming opposition by fishermen, Tribal leaders and grassroots environmentalists.

**2. Funding:** The Resources Legacy Fund Foundation and David and Lucille Packard Foundation both funded the MLPA Initiative, along with giving millions of dollars to the "environmental" NGOs that supported both the MLPA and BDCP processes. ([www.californiaprogessreport.com/...](http://www.californiaprogessreport.com/))

Five non-profits donated a total of \$20 million for the creation of "marine protected areas" under the Marine Life Protection Act Initiative. The Packard Foundation, the biggest contributor to the widely-criticized process, contributed \$8.2 million to the Resources Legacy Fund Foundation to fund MLPA hearings.

The Packard Foundation also helped fund, along with the Stephen Bechtel Foundation, several PPIC reports advocating the construction of the Delta Tunnels as the "solution" to California's water problems and ecosystem restoration.

**3. Conflicts of Interest:** The Blue Ribbon Task Forces to create "marine protected areas" under the MLPA Initiative were filled with individuals with numerous conflicts of interest, including a big oil lobbyist, a marina corporation executive and a coastal real estate developer.

Catherine Reheis-Boyd, the president of the Western States Petroleum Association and a relentless advocate for offshore oil drilling, fracking, the Keystone XL Pipeline and the weakening of environmental laws, chaired the South Coast MLPA Blue Ribbon Task that developed the MPAs that went into effect in Southern California waters on January 1, 2012. She also served on the MLPA Blue Ribbon Task Forces for the North Coast, North Central Coast and Central Coast.

While Reheis-Boyd served on the task forces to "protect" the ocean, the same oil industry that the "marine guardian" represents was conducting environmentally destructive hydraulic fracturing (fracking) operations off the Southern California coast. Documents recently obtained under the Freedom of Information Act and media investigations by Associated Press and truthout.org reveal that the ocean has been fracked at least 203 times in the past 20 years, including the period from 2004 to 2012 that Reheis-Boyd served as a "marine guardian."

In the case of the BDCP/California WaterFix, the proverbial fox was also in charge of the hen house. Governor Jerry Brown appointed Laura King Moon of Woodland, a lobbyist for the state's water exporters, as chief deputy director of the California Department of Water Resources (DWR). ([www.indybay.org/...](http://www.indybay.org/))

Moon had been a project manager for the Bay Delta Conservation Plan since 2011 while "on loan" from the State Water Contractors, an association of 27 public agencies from Northern, Central and Southern California that purchase water under contract from the California State Water Project. Moon passed away from cancer last year.

DWR also hired Susan Ramos, Deputy General Manager of the Westlands Water District, "on loan" from the district to serve as "a liaison between all relevant parties" surrounding the Delta Habitat Conservation and Conveyance Program (DHCCP) and provide "technical and strategic assistance" to DWR. ([www.indybay.org/...](http://www.indybay.org/))

Documents obtained by this reporter under the California Public Records Act revealed that Ramos was hired in an "inter-jurisdictional personal exchange agreement" between the DWR and Westlands from November 15, 2009 through December 31, 2010. The contract was extended to run through December 31, 2011 and again to continue through December 31, 2012.

**4. Greenwashing Goals:** Desperately needed actions to restore our ocean, bay and Delta waters have been substituted under the MLPA Initiative with the imposition of more fishing closures on some of the most heavily regulated ocean waters on the planet to further the Governor's "green" facade.

The alleged "marine reserves" created under the MLPA scam fail to protect the ocean from fracking, oil drilling, pollution, military testing, wind and wave energy projects and all human impacts on the ocean than fishing and gathering - at a time when the ocean is under assault by the oil industry, corporate polluters and ocean industrialists.

The greenwashing that occurred under this process become crystal clear during the Refugio Oil Spill of May 2015 when a badly corroded pipeline operated by the Plains All American Pipeline Company burst, fouling more than 9 miles of pristine coastline. ([www.dailykos.com/...](http://www.dailykos.com/))

Not mentioned in the superficial coverage of the spill by the mainstream media and most of the "alternative media" is the alarming fact that Catherine Reheis-Boyd, the head of the same oil industry trade association that lobbies for the Plains All American Pipeline corporation, whose pipeline rupture caused the massive oil spill, is the very same person who chaired the panel that created the so-called "marine protected areas" that were fouled by the spill.

"Plains All American, the owner of the pipeline, is a member of the Western States Petroleum Association," proclaimed Catherine Reheis-Boyd, President of the Western States Petroleum Association (WSPA), in her blogpost responding to the spill last year.

In the case of the Delta Vision and BDCP/California Water Fix processes, the dire need to restore the Delta by decreasing water exports and retiring drainage impaired land on the San Joaquin Valley's west side has been substituted with plans to build twin tunnels and increase water exports to corporate agribusiness, developers and oil companies while taking Delta family farms out of production under the guise of "habitat restoration."

Meanwhile, California's fish populations are in a historic crisis. The population of Delta Smelt plummeted to a new low in the annual spring survey conducted by the California Department of Fish and Wildlife (CDFW) as the endangered fish moves closer to the abyss of extinction. The 2016 Spring Kodiak Trawl (SKT) index, a relative measure of abundance, is 1.8, a decrease from the 2015 index (13.8) and is the lowest index on record. Only thirteen adult Delta Smelt were collected at 8 stations contributing to the index in 2016.

Ironically, Bill Jennings, Executive Director of the California Sportfishing Protection Alliance (CSPA) pointed out that the State Water Resources Board is now preparing for upcoming hearings on the petitions by the Department of Water Resources and Bureau of Reclamation to change their points of diversion in order to proceed with the construction of Governor Jerry Brown's Delta Tunnels.

"This plan will deprive the Delta smelt of their habitat by exporting vast quantities of water from the Sacramento River," said Jennings. "If the State Board approves the petition, it will only exacerbate things enormously for the Delta smelt and other fish species."

The Delta Tunnels plan will not only hasten the extinction of Delta smelt, but it will also drive longfin smelt, winter-run Chinook salmon, Central Valley steelhead, green sturgeon and other fish species closer and closer to extinction, according to Delta advocates and scientific experts. The California Water Fix will also imperil the salmon and steelhead populations on the Trinity and Klamath rivers, since water from the Trinity, the largest tributary of the Klamath, is diverted to the Sacramento River watershed through a tunnel in the Trinity Mountains from Trinity Lake to Whiskeytown Reservoir.

**5. Racism and denial of tribal rights:** Tribal and environmental justice communities in both processes have been excluded in a classic example of environmental racism.

The institutional racism of the MLPA process was demonstrated when the Yurok Tribe was banned from harvesting abalone, mussels and seaweed off their traditional areas off the False Klamath and Reading Rock as they have done for thousands of years under the "marine protected areas" that went into effect off the coast last December.

And in spite of direct action protests and outrage by Tribal members, fishermen and grassroots environmentalists over the flawed Initiative, the MLPA Initiative still fails to recognize tribal gathering rights in no take "State Marine Reserves," allowing tribal gathering only in "State Marine Conservation Areas" where some fishing and gathering is already allowed.

Likewise, the Bay Delta Conservation Plan/California WaterFix has been developed without the required consent from California Tribes including the Winnemem Wintu Tribe, as required under the UN Declaration on the Rights of Indigenous People. In fact, the first formal informational meeting for California Tribes on the BDCP was held on December 10, 2013, in Sacramento - the day after the EIR/EIS for the tunnel plan was released!

That is hardly "government-to-government" consultation, as required under state, federal and international law.

"There is no precedent for the killing of an estuary of this size, so how could any study be trusted to protect the Delta for salmon and other fish?" asked Caleen Sisk, Chief and Spiritual Leader of the Winnemem Wintu Tribe. "How can they even know what the effects will be? The end of salmon would also mean the end of Winnemem, so the BDCP is a threat to our very existence as indigenous people."

This environmental injustice extends to non-English speakers in California impacted by both processes. MLPA Initiative officials failed to translate the process documents into Spanish and other languages, in spite of the fact that coastal communities impacted by the creation of alleged "marine protected areas" included large numbers of non-English speakers.

Likewise, Restore the Delta (RTD) and environmental justice advocates charged the Brown Administration with violation of the civil rights of more than 600,000 non-English speakers in the Delta by its agencies' failure to provide for "meaningful access to and participation" in the Bay Delta Conservation Plan (BDCP) public comment period.

"More than 600,000 Delta residents alone don't speak English, and are being shut out of the public comment process on this massive project that would affect them deeply," said Esperanza Vielma, executive director of Café Coop & Environmental Justice Representative, San Joaquin County/San Joaquin Valley Air Quality Board. "The Brown Administration is violating the civil rights of Limited English speaking Californians in its rush to build tunnels to serve the top 1% of industrial agriculture." ([www.dailykos.com/...](http://www.dailykos.com/))

**6. Junk Science:** Both the MLPA Initiative and BDCP/California Water Fix fiasco have relied on false assumptions and flawed data with little or no basis in natural science to advance their goals and objectives.

In the case of the MLPA Initiative, the Yurok Tribe said it attempted on numerous occasions to address the scientific inadequacies with the MLPA science developed under the Schwarzenegger administration by adding "more robust protocols" into the equation, but was denied every time.

The Northern California Tribal Chairman's Association, including the Chairs of the Elk Valley Rancheria, Hoopa Valley Tribe, Karuk Tribe, Smith River Rancheria, Trinidad Rancheria, and Yurok Tribe, documented in a letter how the science behind the MLPA Initiative developed by Schwarzenegger's Science Advisory Team is "incomplete and terminally flawed." ([yubanet.com/...](http://yubanet.com/))

Frankie Joe Myers, Yurok Tribal member and Coastal Justice Coalition activist, exposed the refusal to incorporate Tribal science that underlies the "science" of the MLPA process on the day of the historic direct action protest by a coalition of over 50 Tribes and their allies in Fort Bragg in July 2010.

"The whole process is inherently flawed by institutionalized racism," said Myers. "It doesn't recognize Tribes as political entities, or Tribal biologists as legitimate scientists." ([klamathjustice.blogspot.com/...](http://klamathjustice.blogspot.com/))

To make things even worse, a federal judge in May 2014 sentenced Ron LeValley of Mad River Biologists, the former co-chair of the Marine Life Protection Act (MLPA) Initiative Science Advisory Team for the North Coast, to a 10 month federal prison sentence for his role in a conspiracy to embezzle over \$852,000 in federal funds from the Yurok Tribe!

LeValley pleaded guilty to a single federal charge of conspiracy to commit embezzlement and theft from an Indian Tribal Organization (18U.S.C §§ 371 and 1163) in the complex scheme in collaboration with former Yurok Forestry Director Roland Raymond. According to court documents, LeValley submitted more than 75 false invoices between 2007 and 2010 in payment for "work" on northern spotted owl surveys that was never performed. The link to the indictment is available at: [noyonews.net/...](http://noyonews.net/)

The BDCP/California WaterFix "science" is also a sham. For example, on July 18, 2013 scientists from the U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, and National Marine Fisheries Service exposed the hollowness of Secretary John Laird and other state officials that the BDCP is based on "science." This was done after the federal agencies had already made "red flag" comments stating that the completion of the tunnel plan could hasten the extinction of Sacramento River Chinook salmon, Delta smelt, longfin smelt and other fish species.

The federal scientists provided the California Department of Water Resources and the environmental consultants with 44 pages of comments highly critical of the Consultant Second Administrative Draft EIR/EIS Draft, released on May 10, 2013. The agencies found, among other things, that the draft environmental documents were "biased," "insufficient," "confusing," and "very subjective." ([baydeltaconservationplan.com/...](http://baydeltaconservationplan.com/...))

Then in August 2014 the U.S. Environmental Protection Agency (EPA) issued a scathing 43-page comment letter slamming the Bay Delta Conservation Plan's draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS).

The EPA diagnosis revealed that operating the proposed conveyance facilities "would contribute to increased and persistent violations of water quality standards in the Delta, set under the Clean Water Act," and that the tunnels "would not protect beneficial uses for aquatic life, thereby violating the Clean Water Act." ([www.dailykos.com/...](http://www.dailykos.com/...))

Bob Wright, the lawyer for Friends of the River, summed up the complete lack of science that the BDCP/California Water Fix is based upon when he said, "The plan is to grab the water and in the process take it away from designated critical habitat for several already endangered and threatened species of fish including Sacramento River Winter-Run and Central Valley Spring-Run Chinook Salmon and drive them into extinction. That is against the law because federal agencies are prohibited from doing that by the Endangered Species Act," said Wright.

### **Unjust Implementation of MLPA Initiative Continues**

The MLPA Initiative's unjust implementation continues to forge ahead, in spite of opposition by anglers, conservationists and public trust advocates. On April 13, the California Fish and Game Commission moved forward with a controversial final Marine Protected Area "Master Plan" that postpones environmental assessments from every 5 years, as originally promised, to every 10 years. ([fishsniffer.com/...](http://fishsniffer.com/...))

The three members of the commission at the time – President Eric Sklar, Vice President Jacque Hostler-Carmesin, and Member Anthony C. Williams – voted unanimously to approve the plan at its June meeting. Since the April meeting, the Governor has appointed two new Commissioners, Russell Burns of Napa, and Peter Silva of Chula Vista. It's no surprise that both have worked for organizations backing the Delta Tunnels.

Burns is the business manager at Operating Engineers Local Union 3, a strong supporter of the California Water Fix, since 2006. Silva served as senior policy advisor at the Metropolitan Water District of Southern California, one of the key organizations pushing the Governor's Delta Tunnels Plan, from 2005 to 2009

We can see that MLPA and BDCP/California WaterFix processes have much in common in terms of their leadership, funding, conflicts of interest, greenwashing goals, racism and denial of tribal rights, and junk science. I believe that people can more effectively oppose the Governor's Delta Tunnels Plan by understanding the dark links between the MLPA Initiative and BDCP.

The unjust implementation of questionable "marine protected areas" under the MLPA Initiative also provides a cautionary tale for activists fighting the California Water Fix - the fact that science, state, federal and international laws and the majority of people are on your side doesn't necessarily mean that you will prevail. The state and federal governments have a long history of implementing projects that don't make any scientific, legal or economic sense because powerful corporate interests effectively bought off and manipulated agency and elected officials to produce a pre-determined outcome.

It is vital that people fighting against the California WaterFix and for the restoration of salmon and other fish populations in California learn from both the successes and mistakes of MLPA Initiative opponents so they can more effectively wage a successful campaign to stop the construction of Governor Jerry Brown's Twin Tunnels.

## Water Online

### Critics Dub Donald Trump A 'Drought Truther'

By [Sara Jerome @sarmje](#)

News Feature | June 15, 2016

Critics say drought deniers are the latest kind of “truther,” rejecting science in favor of a theory that California’s water challenges have been exaggerated.

The target of these criticisms is presumptive GOP presidential nominee Donald Trump, who [declared during a visit](#) to California last month: “There is no drought.”

Huffington Post food and water reporter Joseph Erbentraut [said these remarks](#) “might be the most high-profile example of drought trutherism yet” and questioned the potential impact of Trump’s claims.

“Could Trump, who has described climate change as a ‘man-made’ ‘hoax’ despite the overwhelming evidence to the contrary, help spur a new breed of drought deniers?” he wrote.

It would not be the first time Trump championed a conspiracy theory. In 2011, [he was vocal about](#) calling for President Obama to release his birth certificate to prove he is an American citizen.

At least one analyst doubted that Trump’s remarks will spark a drought-denial movement.

Peter Gleick, a water and climate analyst and co-founder of the Pacific Institute, predicted that Trump’s drought views will be seen as “nonsense.” Gleick did not see much possibility of drought denial reaching the scale of climate change denial.

“Even climate deniers have trouble denying drought when they see parched hills, empty reservoirs, dying salmon, dead forests and blistering hot weather,” Gleick said, per the report.

FactCheck.org, a nonpartisan, nonprofit analysis website, [assessed Trump’s claims](#) about the drought and found they do not hold water.

During a speech in California, Trump sounded off against environmental laws protecting fish. He said water is being sent “out to sea” to protect a “three-inch fish.”

“If I win, believe me, we’re going to start opening up the water so that you can have your farmers survive, so that your job market will get better,” Trump said, [per the Los Angeles Times](#).

But according to FactCheck.org, Trump’s characterization of these policies is “misleading.”

“Officials release fresh water from reservoirs primarily to prevent salt water from contaminating agricultural and urban water supplies,” the website said. “California’s water issues can’t be reduced to the preservation of a threatened fish species. Experts told us water management practices, the state’s natural climate and global warming have all contributed to the state’s current drought and water issues.”

At his Fresno rally, however, Trump had plenty of support. Many attendees were holding “farmers for Trump” signs, [according to](#) BuzzFeed. And one critic said there are some broad points Trump stated correctly.

“There is no existential shortage of water in the state, not at all. What there is is misallocation of water and that misallocation is because water is incorrectly priced there. The solution therefore is to get the pricing right: then the allocation will be. We also know something more about this: it doesn’t matter what the current or original allocations are. Getting the price right will solve the problem. So, he’s not being quite as stupid as some people think he is,” said Tim Worstall, a [op-ed contributor](#) for *Forbes*.

To read more about the Western drought visit Water Online’s [Water Scarcity Solutions Center](#).

## Maven’s Notebook

June 15, 2016 [Maven](#) [News Worth Noting](#)

### California Water Alliance, Coalition for a Sustainable Delta raise concerns about federal proposed actions for Delta smelt, salmon

Yesterday, more interest groups raised concerns over the US FWS and NMFS proposed actions for summer operations at Shasta and Folsom reservoirs to benefit winter-run salmon and Delta smelt. (See: [House delegation sends letter to Secretary Jewell regarding FWS & NMFS proposed actions for Delta smelt, salmon](#))

The California Water Alliance called on Congress to conduct hearings into the matter. *“USF&WS and NOAA/NMFS exhibit no understanding whatsoever of the consequences of their water mandates and have failed to consult in good faith with the state or even with each other,”* said Aubrey Bettencourt, CalWA’s executive director. *“While some California Congressional members on both sides of the aisle have expressed concern and asked for answers, it is time for Congress to convene hearings regarding these environmental enforcement decisions that present a peril to public health affecting California’s most vulnerable populations.”*

[Read the full press release by clicking here.](#)

The Coalition for a Sustainable Delta also weighed in, sending a letter to Secretary Jewell, saying there is no scientific justification for the proposed increased flows. *“It is troubling that the action is being proposed entirely outside of the collaborative process that has been established to examine Delta operations, the Collaborative Science and [Adaptive Management](#) Program (CSAMP), of which the Fish and Wildlife Service is a participant. We call on Interior to examine all stressors on the delta smelt and develop a plan that addresses the multiple stressors on the species, and to do so in the collaborative science process that has been established,”* the letter states.

[Read the full letter here.](#)



**To:** Dave Ciapponi[dciapponi@westlandswater.org]  
**From:** David Houston  
**Sent:** Thur 6/9/2011 8:03:32 PM  
**Subject:** S&P Dexia Reports  
[S&P Report - Rating Actions Taken on 387 Dexia Public Finance Issues \(8June2011\).pdf](#)  
[S&P Report - Dexia on Negative Watch \(23May2011\).pdf](#)

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May23,2011

### Research Update:

## Dexia Core Bank 'A/A-1' Ratings Placed On Watch Negative On Greece Exposure And Potential Acceleration Of Deleveraging

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## Research Update:

# Dexia Core Bank 'A/A-1' Ratings Placed On Watch Negative On Greece Exposure And Potential Acceleration Of Deleveraging

## Overview

- We believe that deterioration of Greece's creditworthiness adds to the existing negative pressure on Belgian banking group Dexia's €122 billion legacy portfolio, which includes most of the €4.3 billion direct exposure to Greek sovereign debt.
- On May 18, 2011, Dexia announced that it will make use of any opportunity to accelerate the deleveraging on the back of its strong capital position.
- We are placing our 'A/A-1' long- and short-term ratings on Dexia's core banks, Dexia Crédit Local (DCL), Dexia Bank (DB), and Dexia Banque Internationale a Luxembourg (DBIL), on CreditWatch negative. DCL, DB, and DBIL together represent over 90% of group consolidated assets.
- We expect to resolve the CreditWatch once we have greater visibility on the impact that any potential acceleration of deleveraging would have on Dexia's financial profile. We currently anticipate a possible downgrade of the long- and short-term ratings by one notch.

## Rating Action

On May 23, 2011, Standard & Poor's Ratings Services placed its 'A/A-1' long- and short-term counterparty credit ratings on the core entities of Belgium-based banking group Dexia S.A. (Dexia): Dexia Crédit Local (DCL), Dexia Bank S.A. (DB), and Dexia Banque Internationale à Luxembourg (DBIL) on CreditWatch with negative implications.

At the same time, we also placed the 'A-' long-term counterparty credit ratings on Dexia's Italian subsidiary, Dexia Crediop SpA, on CreditWatch with negative implications. Under our group rating methodology, we cap the ratings on Dexia Crediop, which in our view benefits from extraordinary parent support, at one notch below those on its parent DCL.

## Rationale

The CreditWatch placement reflects our view that the deterioration of Greece's creditworthiness adds to the existing negative pressure on Dexia's €122 billion legacy portfolio, which includes most of the group's €4.3 billion direct exposure to Greek sovereign debt. In addition, the possibility of an acceleration in deleveraging, announced by Dexia on May 18, raises concerns about restructuring risks and Dexia's ability to become independent from government support in the foreseeable future.

The 'A/A-1' ratings on Belgium-based DB, France-based DCL, and Luxembourg-based DBIL, are based on a consolidated analysis of these three core operating banks of parent Dexia S.A. (Dexia, not rated). DCL, DB, and DBIL together represent over 90% of group consolidated assets.

The ratings reflect the strong support Dexia receives from the Belgian and French governments, and our view of Dexia's satisfactory capitalization and low-risk loan book. The ratings are constrained by our view of the consequences to Dexia of its high recourse to wholesale funding instruments, modest profitability, and by the credit and market risks of its €122 billion legacy portfolio.

We believe the Kingdom of Belgium (AA+/Negative/A-1+), the Republic of France (AAA/Stable/A-1+), and the Grand Duchy of Luxembourg (AAA/Stable/A-1+) are likely to provide further support to Dexia--a highly systemically important bank in our view--if necessary. We therefore include three notches of uplift above the stand-alone credit profile (SACP) in determining the long-term counterparty credit rating on DB, DCL, and DBIL. The French and Belgian governments and local public authorities control about 50% of Dexia's capital.

In our view, Dexia's profitability decreased in 2010 because of its moves to reduce recourse to short-term wholesale funding while selling down legacy securities and loans. In our view, profitability could further decline in 2011 as Dexia aims to continue to reduce its legacy portfolio.

Standard & Poor's risk-adjusted capital (RAC) ratio for Dexia stood at an estimated 10% before diversification benefits on Dec. 31, 2010. This strong capital ratio, relative to those of Dexia's peers we rate, does not, in our view, account for the exposure to spread risk on Dexia's €122 billion legacy portfolio. The negative revaluation reserves on available-for-sale (AFS) fixed-income securities stood at €9 billion on March 31, 2011.

## **CreditWatch**

We expect to resolve the CreditWatch once we have greater visibility on the impact that any potential acceleration of deleveraging would have on Dexia's financial profile. We would need to assess whether such an acceleration could help to reduce the risk profile and offset the negative impact of the deterioration of Greece's creditworthiness.

We could affirm the ratings if we believe that the acceleration of the group's restructuring would reduce its risk profile without materially compromising Dexia's financial profile, and in a way that would improve profitability prospects at Dexia.

We could lower the ratings if we believe that the group's risk profile is not likely to improve or offset the impact of the deterioration of Greece's creditworthiness, or if we think that the acceleration of the deleveraging is

likely to materially deteriorate Dexia's financial profile.

## Related Criteria And Research

All articles listed below are available on RatingsDirect on the Global Credit Portal, unless otherwise stated.

- Ratings On Greece Lowered To 'B/C' From 'BB-/B' On Rising Rescheduling Risk; CreditWatch Negative Maintained, May 9, 2011
- Banks: Bank Capital Methodology And Assumptions, Dec. 6, 2010
- Understanding Standard & Poor's Ratings Definitions, June 3, 2009
- Group Methodology, April 22, 2009
- Bank Rating Analysis Methodology Profile, March 18, 2004

## Ratings List

Ratings Affirmed; CreditWatch Action

	To	From
Dexia Bank S.A.		
Counterparty Credit Rating	A/Watch Neg/A-1	A/Negative/A-1
Certificate Of Deposit	A/Watch Neg/A-1	A/A-1
Senior Unsecured	A/Watch Neg	A
Subordinated	A-/Watch Neg	A-
Dexia Credit Local		
Dexia Banque Internationale a Luxembourg		
Counterparty Credit Rating	A/Watch Neg/A-1	A/Negative/A-1
Dexia Credit Local		
Certificate Of Deposit		
Foreign Currency	A/Watch Neg	A
Local Currency	A/Watch Neg/A-1	A/A-1
Senior Unsecured	A/Watch Neg	A
Subordinated	A-/Watch Neg	A-
Dexia Banque Internationale a Luxembourg		
Certificate Of Deposit	A/Watch Neg/A-1	A/A-1
Senior Unsecured	A/Watch Neg	A
Subordinated	A-/Watch Neg	A-
Dexia Crediop SpA		
Counterparty Credit Rating	A-/Watch Neg/A-2	A-/Developing/A-2
Senior Unsecured	A-/Watch Neg	A-
Crediop Overseas Bank Ltd.		
Senior Unsecured	A-/Watch Neg	A-

NB. This list does not include all ratings affected.

**Additional Contact:**

Financial Institution Ratings Europe; FIG\_Europe@standardandpoors.com

Complete ratings information is available to subscribers of RatingsDirect on the Global Credit Portal at [www.globalcreditportal.com](http://www.globalcreditportal.com). All ratings affected by this rating action can be found on Standard & Poor's public Web site at [www.standardandpoors.com](http://www.standardandpoors.com). Use the Ratings search box located in the left column. Alternatively, call one of the following Standard & Poor's numbers: Client Support Europe (44) 20-7176-7176; London Press Office (44) 20-7176-3605; Paris (33) 1-4420-6708; Frankfurt (49) 69-33-999-225; Stockholm (46) 8-440-5914; or Moscow 7 (495) 783-4009.

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June 8, 2011

## Rating Actions Taken On 387 Dexia Credit Local LOC- And Liquidity Facility-Backed Public Finance Issues

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# Rating Actions Taken On 387 Dexia Credit Local LOC- And Liquidity Facility-Backed Public Finance Issues

Standard & Poor's Ratings Services placed its ratings on 387 Dexia Credit Local letter of credit (LOC)- and liquidity facility-backed U.S. Public Finance issues on CreditWatch with negative implications and revised its outlook on 172 of these issues (see table).

These rating actions follow Standard & Poor's May 23, 2011, placement of its rating on Dexia Credit Local on CreditWatch with negative implications (see "Dexia Core Bank 'A/A-1' Ratings Placed On Watch Negative On Greece Exposure And Potential Acceleration Of Deleveraging," published May 23, 2011, on RatingsDirect on the Global Credit Portal).

The ratings on the 387 issues have credit and/or liquidity support provided by Dexia Credit Local in the form of either LOCs or liquidity facilities, which provide for the full and timely payment of interest and principal according to the transactions' terms.

Name	To	From	New outlook	Old outlook	New CreditWatch status	Old CreditWatch status
Merrill Lynch Put FLOATS/RITs SerPT-1000 Illinois resident tax-exempt SerPT-3524	AAA	AAA	N.M.	N.M.	Negative	
Merrill Lynch Put FLOATS/RITs SerPT-1000 Illinois put float opt tax-exempt SerPT-3524	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative	
Merrill Lynch Put FLOATS/RITs SerPT-1000 Illinois resident tax-exempt SerPT-3523	AAA	AAA	N.M.	N.M.	Negative	
New York City Hsg Dev Corp multifamily bonds 2008 SerA-1-A Variable Rate	AA/A-1	AA/A-1	N.M.	Stable	Negative	
Merrill Lynch Put FLOATS/RITs SerPT-1000 New Jersey Tpk Auth resident tax-exempt SerPT-3752 & B	AAA	AAA	N.M.	N.M.	Negative	
Merrill Lynch Put FLOATS/RITs SerPT-1000 New Jersey Tpk Auth put float opt tax-exempt SerPT-3752	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative	
Merrill Lynch Put FLOATS/RITs SerPT-1000 New Jersey Tpk Auth resident tax-exempt SerPT-2493 & New Jersey Tpk Auth rev bonds 2004C-2d	AAA	AAA	N.M.	N.M.	Negative	
Merrill Lynch Put FLOATS/RITs SerPT-1000 New Jersey Tpk Auth put float opt tax-exempt SerPT-2493 & New Jersey Tpk Auth rev bonds 2004C-	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative	
Merrill Lynch Put FLOATS/RITs SerPT-1000 Arkansas Rive Pwr Auth resident tax-exempt SerPT-3575	AA+	AA+	N.M.	N.M.	Negative	
Merrill Lynch Put FLOATS/RITs SerPT-1000 Arkansas Rive Pwr Auth put float opt tax-exempt SerPT-3575	AA+/A-1	AA+/A-1	N.M.	N.M.	Negative	
Merrill Lynch Put FLOATS/RITs SerPT-1000 Puerto Rico Hwy & Trans Auth resident tax-exempt SerPT-3931A-B	AA+	AA+	N.M.	N.M.	Negative	
Merrill Lynch Put FLOATS/RITs SerPT-1000 Puerto Rico Hwy & Trans Auth put float opt tax-exempt SerPT-3931	AA+/A-1	AA+/A-1	N.M.	N.M.	Negative	
Merrill Lynch Put FLOATS/RITs SerPT-1000 Howard Bend Levee Dist resident tax-exempt SerPT-3338	AA+	AA+	N.M.	N.M.	Negative	

Merrill Lynch Bence Dist	Put FLOATS/RIT floatopttax-excpt	PT-1000 serPT-3338	Howard	AA+/A-1	AA+/A-1	N.M.	N.M.	Negative
Merrill Lynch residnt tax-excpt	Put FLOATS/RIT floatopttax-excpt	PT-1000 serPT-2802	(California)	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch putfloatopttax-excpt	Put FLOATS/RIT floatopttax-excpt	PT-1000 serPT-2802	(California)	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch TpkAuth	Put FLOATS/RIT floatopttax-excpt	PT-1000 serPT-3602	New Jersey	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch TpkAuth	Put FLOATS/RIT residnt tax-excpt	PT-1000 serPT-3602	New Jersey	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch of Utah	Put FLOATS/RIT residnt tax-excpt	PT-1000 serPT-432	University of the BdRgof the STof UTUnvof UTAx& CmpFac	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch of Utah	Put FLOATS/RIT putfloatopttax-excpt	PT-1000 serPT-432	University of the BdRgof the STof UTUnvof UTAx& Cmp	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Louisntl Arpt	Put FLOATS/RIT putfloatopttax-excpt	PT-1000 serPT-3584	Lambe St.	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Louisntl Arpt	Put FLOATS/RIT residnt tax-excpt	PT-1000 serPT-3584	Lambe St. city St Louis MO Arptrevrfdg bnd	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch of Ed	Put FLOATS/RIT residnt tax-excpt	PT-1000 serPT-362	Chicago Brd of Ed	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch of Ed	Put FLOATS/RIT putfloatopttax-excpt	PT-1000 serPT-362	Chicago Brd of Ed	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Hwy & Transp	Put FLOATS/RIT Auth putfloatopttax-excpt	PT-1000 serPT-3623	Puerto Rico Hwy & Tran	AA+/A-1	AA+/A-1	N.M.	N.M.	Negative
Merrill Lynch Hwy & Transp	Put FLOATS/RIT Auth residnt tax-excpt	PT-1000 serPT-3623	Puerto Rico Hwy & Tran	AA+	AA+	N.M.	N.M.	Negative
Merrill Lynch Puente Unif Sch Dist	Put FLOATS/RIT mil residnt tax-excpt	PT-1000 serPT-2877	Hacienda Puente Unif Sch	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Puente Unif Sch Dist	Put FLOATS/RIT putfloatopttax-excpt	PT-1000 serPT-2877	Hacienda Puente Unif Sch Dist	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Indianapolis	Put FLOATS/RIT residnt tax-excpt	PT-1000 serPT-396	(Indianapolis)	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Indianapolis	Put FLOATS/RIT putfloatopttax-excpt	PT-1000 serPT-396	(Indianapolis)	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Indianapolis	Put FLOATS/RIT residnt tax-excpt	PT-1000 serPT-396	(Indianapolis)	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Indianapolis	Put FLOATS/RIT putfloatopttax-excpt	PT-1000 serPT-396	(Indianapolis)	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Muni Fin Agcy	Put FLOATS/RIT putfloatopttax-excpt	PT-1000 serPT-332	Puerto Rico Muni Fin Agcy	AA/A-1	AA/A-1	N.M.	N.M.	Negative
Merrill Lynch Muni Fin Agcy	Put FLOATS/RIT residnt tax-excpt	PT-1000 serPT-332	Puerto Rico Muni Fin Agcy	AA	AA	N.M.	N.M.	Negative

Rating Actions Taken On 387 Dexia Credit Local LOC- And Liquidity Facility-Backed Public Finance Issues

Merrill Lynch Intl Arpt Auth (Pitts Intl Arpt)	Put FLOATS/RITESerPT-1000 residnt tax-excptsserPT-4304	Pittsburgh Allegheny	AA+	AA+	N.M.	N.M.	Negative
Merrill Lynch Brdf Sch Commes 1st Mtg Refndsser2007	Put FLOATS/RITESerPT-1000 residnt tax-excptsserPT-3895	Indianapolis IPS	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Brdf Sch Commes 1st Mtg Refndsser2007	Put FLOATS/RITESerPT-1000 putfloatopttax-excptsserPT-3895	Indianapolis IPS	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch (Indianapolis) Indianapolis Local Pub Imp Bnd Series2007B Wa	Put FLOATS/RITESerPT-1000 putfloatopttax-excptsserPT-3962	Indianapolis	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch (Indianapolis) Indianapolis Local Pub Imp Bnd Series2007B Waterw	Put FLOATS/RITESerPT-1000 residnt tax-excptsserPT-3962	Indianapolis	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Atlanta Rapid Transi Auth	Put FLOATS/RITESerPT-1000 putfloatopttax-excptsserPT-4042	Metro Atlanta	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Atlanta Rapid Transi Auth	Put FLOATS/RITESerPT-1000 residnt tax-excptsserPT-4042A&B	Metro Atlanta	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch of Ed	Put FLOATS/RITESerPT-1000 residnt tax-excptsserPT-3624	Chicago Brd of Ed	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch of Ed	Put FLOATS/RITESerPT-1000 putfloatopttax-excptsserPT-3624	Chicago Brd of Ed	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Dep of Transportation	Put FLOATS/RITESerPT-1000 residnt tax-excptsserPT-3701A	California	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Dep of Transportation	Put FLOATS/RITESerPT-1000 putfloatopttax-excptsserPT-3701	California	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch O'Hare Intl Arpt	Put FLOATS/RITESerPT-1000 residnt tax-excptsserPT-3356A-B	Chicago	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch O'Hare Intl Arpt	Put FLOATS/RITESerPT-1000 putfloatopttax-excptsserPT-3356	Chicago	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Atlanta Rapid Transi Auth	Put FLOATS/RITESerPT-1000 residnt tax-excptsserPT-4017A	Metro Atlanta	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Atlanta Rapid Transi Auth	Put FLOATS/RITESerPT-1000 putfloatopttax-excptsserPT-4017	Metro Atlanta	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch of Ed	Put FLOATS/RITESerPT-1000 residnt tax-excptsserPT-3569	Chicago Brd of Ed	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch of Ed	Put FLOATS/RITESerPT-1000 putfloatopttax-excptsserPT-3569	Chicago Brd of Ed	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch (Massachusetts Bay Transp Auth)	Put FLOATS/RITESerPT-1000 serpt-3684	Massachusetts Bay Transp Auth	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch residual certs	Put FLOATS/RITESerPT-1000	Houston	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch criteria	Put FLOATS/RITESerPT-1000	Houston	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative

Rating Actions Taken On 387 Dexia Credit Local LOC- And Liquidity Facility-Backed Public Finance Issues

Merrill Lynch (Indianapolis) putfloatopttax-excptsser Indianapollocalpubimprovdbanker	PT-1000 PT-3390	AA/A-1	AA/A-1	N.M.	N.M.	Negative
Merrill Lynch (Massachusetts) putfloatopttax-excptsser	PT-1000 PT-3612	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch (Massachusetts) resdnttax-excptsser	PT-1000 PT-3612	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch (Detroit) putfloatopttax-excptsser	PT-1000 PT-2595	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch (Detroit) resdnttax-excptsser	PT-1000 PT-2595	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch (MetropolitanTranspAuth) resdnttax-excptsser	PT-1000 PT-2994	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch (MetropolitanTranspAuth) putfloatopttax-excptsser	PT-1000 PT-2994	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch (Metro AtlantaRapidTransitAuth) resdnttax-excptsser	PT-1000 PT-3945	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch (Metro AtlantaRapidTransitAuth) putfloatopttax-excptsser	PT-1000 PT-3945	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch (Chicago BrdofEd) resdnttax-excptsser	PT-1000 PT-3010A-C	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch (Chicago BrdofEd) putfloatopttax-excptsser	PT-1000 PT-3010	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch (Chicago BrdofEd) resdnttax-excptsser	PT-1000 PT-2931A-D	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch (Chicago BrdofEd) putfloatopttax-excptsser	PT-1000 PT-2931	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch (Indiana) resdnttax-excptsser	PT-1000 PT-3610A-C	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch (Indiana) putfloatopttax-excptsser	PT-1000 PT-3610	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch (Puerto Rico Hwy& TranspAuth) resdnttax-excptsser	PT-1000 PT-3189A&B	AA+	AA+	N.M.	N.M.	Negative
Merrill Lynch (Puerto Rico Hwy& TranspAuth) putfloatopttax-excptsser	PT-1000 PT-3189	AA+/A-1	AA+/A-1	N.M.	N.M.	Negative
Indiana Hlth& EducFncgAuth(Indiana University Health)osp/RDGer2005B(AGM)		AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Merrill Lynch (Massachusetts) resdnttax-excptsser	PT-1000 PT-4314	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch (Downey UnifSchDist) resdnttax-excptsser	PT-1000 PT-4066	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch (Downey UnifSchDist) putfloatopttax-excptsser	PT-1000 PT-4066	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch (Pittsburgh IntlArpt) PT-3965		AA+	AA+	N.M.	N.M.	Negative
Merrill Lynch (Pittsburgh IntlArpt) putfloatopttax-excptsser	PT-1000 PT-3965	AA+/A-1	AA+/A-1	N.M.	N.M.	Negative
Merrill Lynch (Pittsburgh IntlArpt) putfloatopttax-excptsser	PT-1000 PT-3743	AA+/A-1	AA+/A-1	N.M.	N.M.	Negative
Merrill Lynch (Pittsburgh IntlArpt) resdnttax-excptsser	PT-1000 PT-3743	AA+	AA+	N.M.	N.M.	Negative

*Rating Actions Taken On 387 Dexia Credit Local LOC- And Liquidity Facility-Backed Public Finance Issues*

Merrill Lynch Port of Alabama (Auth)residnt tax-execrptsserPT-1000 PT-3734	AA+	AA+	N.M.	N.M.	Negative
Merrill Lynch Port of Alabama (Auth)putfloatopttax-excptsserPT-1000 PT-3734	AA+/A-1	AA+/A-1	N.M.	N.M.	Negative
Merrill Lynch Hwy & Transp (Auth)residnt tax-execrptsserPT-1000 PT-3677	AA+	AA+	N.M.	N.M.	Negative
Merrill Lynch Hwy & Transp (Auth)putfloatopttax-excptsserPT-1000 PT-3677	AA+/A-1	AA+/A-1	N.M.	N.M.	Negative
Merrill Lynch Louis Intl Arpt (Auth)residnt tax-excptsserPT-1000 PT-3431A&B	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Louis Intl Arpt (Auth)putfloatopttax-excptsserPT-1000 PT-3431	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch (Massachusetts) (Auth)putfloatopttax-excptsserPT-1000 PT-3058	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch (Massachusetts) (Auth)residnt tax-excptsserPT-1000 PT-3058A-C	AAA	AAA	N.M.	N.M.	Negative
Dexia Certs Tr (Pennsylvania Univ)serDCI2008-06re Pennsylvania Univbnds ser2007td05/22/2008due 08/15/2008	AA/A-1	AA/A-1	N.M.	N.M.	Negative
Merrill Lynch Detroit Sch Dist (Auth)residnt tax-excptsserPT-1000 PT-3480	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Detroit Sch Dist (Auth)putflt opttax-excptsserPT-1000 PT-3480	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Detroit (Auth)residnt tax-excptsserPT-1000 PT-3756	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Detroit (Auth)putfloatopttax-excptsserPT-1000 PT-3756	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch California (Auth)putflt opttax-excptsserPT-1000 PT-4369	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch California (Auth)residnt tax-excptsserPT-1000 PT-4369	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch New Jersey (Auth)putfloatopttax-excptsserPT-1000 PT-3824	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch New Jersey (Auth)residnt tax-execrptsserPT-1000 PT-3824Arenjecon devauthschfaconstfndgonds2005	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Port of Seattle (Auth)putfloatopttax-excptsserPT-1000 PT-3475	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Port of Seattle (Auth)residnt tax-execrptsserPT-1000 PT-3475	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Lake Cnty (Auth)putfloatopttax-excptsserPT-1000 PT-3383	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Lake Cnty (Auth)residnt tax-execrptsserPT-1000 PT-3383A-D	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch St. Louis (Auth)putfloatopttax-excptsserPT-1000 PT-4085	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch St. Louis (Auth)residnt tax-excptsserPT-1000 PT-4085	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Michigan (Auth)putflt opttax-excptsserPT-1000 PT-4098	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Michigan (Auth)residnt tax-excptsserPT-1000 PT-4098	AAA	AAA	N.M.	N.M.	Negative

Rating Actions Taken On 387 Dexia Credit Local LOC- And Liquidity Facility-Backed Public Finance Issues

Merrill Lynch Put FLOATs/RITESerPT(Puerto Rico Elec PwrAuth)putfloatopttax-excptsserPT-4147	AA+/A-1	AA+/A-1	N.M.	N.M.	Negative
Merrill Lynch Put FLOATs/RITESerPT(Puerto Rico Elec PwrAuth)residnttax-excptsserPT-4147	AA+	AA+	N.M.	N.M.	Negative
Merrill Lynch Put FLOATs/RITESerPT(Massachusetts WtrResourceAuth)putfloatopttax-excptsserPT-4348	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Put FLOATs/RITESerPT(Massachusetts WtrResourceAuth)residnttax-excptsserPT-4348	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Put FLOATs/RITESerPT(Massachusetts WtrResourceAuth)putfloatopttax-excptsserPT-4370 reTheMassachusettsWtrResAuthg	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Put FLOATs/RITESerPT(Massachusetts WtrResourceAuth)residnttax-excptsserPT-4370 reTheMassachusettsWtrResourceAuth	AAA	AAA	N.M.	N.M.	Negative
ShelbyCntyGO	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Merrill Lynch Put FLOATs/RITESerPT-100(Brevard CntySchBrd)residnttax-excptsserPT-4638	A	A	N.M.	N.M.	Negative
Merrill Lynch Put FLOATs/RITESerPT-100(Brevard CntySchBrd)putfloatopttax-excptsserPT-4638	A/A-1	A/A-1	N.M.	N.M.	Negative
Dexia Credit Local(Brevard CntySchBrd)custodiaptsser DCI2009(CR-1)	A	A	N.M.	N.M.	Negative
PennsylvaniaHsgFinAgysinfam2005-88C	AA+/A-1	AA+/A-1	N.M.	Negative	Negative
PennsylvaniaHsgFinAgysinfamtmgtrevbndsser 2005-88C	AA+/A-1	AA+/A-1	N.M.	Negative	Negative
ColoradoHsg&FinAuthclass adjratemultifanprojbnds, ser2005A-2	AAA/A-1	AAA/A-1	N.M.	Stable	Negative
Los AngelesCntyMetroTransAuthsales taxrevrfdgbnds (PropositionAFirstTierSenior)ser2008-A4	AAA/A-1	AAA/A-1	N.M.	Stable	Negative
Los AngelesCntyMetroTransAuthsales taxrevrfdgbnds (PropositionAFirstTierSenior)ser2008-A3	AAA/A-1	AAA/A-1	N.M.	Stable	Negative
SouthernCaliforniaPubPwrAuthpwrprojrevbnds2008 subordfdg(PalmdereProj)serB	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Credit Local(San DiegoUnifSchDist)serDCL 2008-0662008GOfdgbndselecof 1998serG-1	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
OrangeCntyTeetePlarrevbndsCPRgrserA due 12/01/2058	A-1	A-1	N.M.	N.M.	Negative
MunicipalElecAuthof GeorgiaPropnesubordbndsser 2008B	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Credit Local(California)serDCI2008-048floatcerts reGOOfdgbnds	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Dexia Credit Local(MassachusettsWtrResourceAuth)ser DCI2008-005floatcertsregenrevrfdgbnds2007serB	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia CertsTr(DetroitSchDist)serDCI2008-045float certsreMIschldg& siteimprfdgbndsser2005A	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Dexia Credit Local(ZionsvilleComntSchCorp)serDCL 2008-047floatcertsre(BooneCntyIN)1stmrtgrfdgbnds, ser2007	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Dexia Credit Local(UtahTransiAuth)serDCI2008-021 floatcertsresalestaxrevrfdgbndsser2006C	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Credit Local(IllinoisReglTransAuth)serDCL 2008-020floatcertsreCoolDupage& LakeMcHenry& Will CountiesILGObndsser2004A	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Dexia Credit Local(MassachusettsWtrResourceAuth)ser DCI2007-00floatregenrevrfdgbnds2007serB	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative

*Rating Actions Taken On 387 Dexia Credit Local LOC- And Liquidity Facility-Backed Public Finance Issues*

DexiaCreditLocal(GardeStatePresTrustserDCL 2007-006loateoperspac& farmlandpresbonds2005 serA	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
DexiaCreditLocal(PuertRicHwy& TransAuthserDCL 2008-008boatcertsehighwayevbndsserCC	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
DexiaCreditLocal(PuertRicHwy& TransAuthDCL 2008-007boatcertsehighwayevbndsserCC	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
DexiaCreditLocal(MassachusettsWtr ResourceAuthser DCL2008-006boatcertsegenrevrefbndsserB	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
DexiaCreditLocal(MassachusettsWtr ResourceAuthser DCL2008-004boatcertsegenrevrefbndsserB	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
KansasCityvarratedemrfdgbnds(HRoBartle ConventionCtrProjser2008F	A/A-1	A/A-1	N.M.	N.M.	Negative
AustirHOTVRDB	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
MerrillLynchPutFLOATS/RITESerPT(PalmBeachCnty SchBrd)residnttax-excptsserPT-4615Palm Beachschbrdeasingcorpcu	A	A	N.M.	N.M.	Negative
MerrillLynchPutFLOATS/RITESerPT(PalmBeachCnty SchBrd)putflt opttax-excptsserPT-4615Palm Beachschbrdeasingcorpc	A/A-1	A/A-1	N.M.	N.M.	Negative
DexiaCreditLocal(PalmBeachCnty)custrecptsser2008 reDexiaCreditLocalser2003B	A	A	N.M.	N.M.	Negative
WestPalmBeachutilser2008VRD(BASSURETY)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
MerrillLynchPutFLOATS/RITESerPT-1000(Chicago) residnttax-excptsserPT-40072ndienwastewtr transrevrfdgbndsDCL-98	AAA	AAA	N.M.	N.M.	Negative
MerrillLynchPutFLOATS/RITESerPT-1000(Chicago) putfloatopttax-excptsserPT-40072ndienwastewtr transrevrfdgbndsreDCL-98	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
MerrillLynchPutFLOATS/RITESerPT-1000NewJersey TranspTrusFdAuth)residnttax-excptsserPT-2500 reDCL-113	AAA	AAA	N.M.	N.M.	Negative
MerrillLynchPutFLOATS/RITESerPT-1000NewJersey TranspTrusFdAuth)putfloatopttax-excptsser PT-2500reDCL-113	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
MerrillLynchPutFLOATS/RITESerPT-1000California DeptofTransportation)putfloatopttax-excptsser PT-350reCAInfrastructure&Ecor	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
MerrillLynchPutFLOATS/RITESerPT-1000California DeptofTransp)putfloatopttax-excptsserPT-368reCA Infrastructure&EcorDevbonds	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
MerrillLynchPutFLOATS/RITESerPT-1000putfloatopt tax-excptsserPT-4036NJtpkAuthtpkrevrfdgbnds ser2004C	A+/A-1	A+/A-1	N.M.	N.M.	Negative
MerrillLynchPutFLOATS/RITESerPT-1000New Jersey)putfloatopttax-excptsserPT-2847NJ Econ DevAuthsch2005reDCL-125	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
MerrillLynchPutFLOATS/RITESerPT-1000New Jersey)residnttax-excptsserPT-2847NJ Econ DevAuthsch2005reDCL-125	AAA	AAA	N.M.	N.M.	Negative
MerrillLynchPutFLOATS/RITESerPT-1000Chicago O'HareIntlArpt)putfloatopttax-excptsserPT-333re DCL-65DCL-66DCL-67	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
MerrillLynchPutFLOATS/RITESerPT-1000Chicago O'HareIntlArpt)residnttax-excptsserPT-333re DCL-65DCL-66DCL-67	AAA	AAA	N.M.	N.M.	Negative

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Merrill Lynch PwC FLOATS/RITES SerPT-1000 Outfloatopt tax-excptsserPT-4176 UtahTransAuthsubsales tax revbnds	A/A-1	A/A-1	N.M.	N.M.	Negative
M-S-PwAgsubordtenrevbnds(variable rate)(taxable)(San JuanProjser2008N	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
M-S-PwAgsubordtenrev(variable rate)(San JuanProjser2008M	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Puerto Rico GQ(AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
West Virginia Parkway Authority varratedembds	AA-/A-1	AA-/A-1	N.M.	N.M.	Negative
New York St Loca Gov Asst Corp New York State sales taxrevfdgbnds(srlten)ser2008B-BV2	AAA/A-1	AAA/A-1	N.M.	Stable	Negative
Houston WS1stlien(AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Metropolitan TransAuthdedicated taxVRDBser2008A (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Houston WS1stlien(AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Colorado Sch of Mines Brd of Trustees enterprisefdg bnds ser2008B	A/A-1	A/A-1	N.M.	N.M.	Negative
Lackawanna Cnty GOVRDBser2008A & B(AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Oregon GO Veterans Welfarebnds(Non Amt Variable Rate) ser90B(SBPA-Dexia Credit Local Liquid Prov)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Dexia Certs Tr(California)serDCI2008-066 GOfdg bnds	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Tr(North East Indp Sch Dist)serDCI2008-062 reuntdtaxfdgbnds ser2007	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Tr(New Jersey)serDCI2008-066 NJ Eco Dev Auth Sch Fa construction bnds ser2005N	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Tr(Purdue University)	AA+/A-1	AA+/A-1	N.M.	N.M.	Negative
Dexia Certs Tr(Massachusetts Bay TransAuth)serDCL 2008-056 Massachusetts Bay TransAuthrs sales tax 2006serA	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Tr(New Jersey Tpk Auth)serDCI2008-057 New Jersey tpk auth tpk revfdgbnds ser2005A	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Tr(Illinois)serDCI2008-056 Est of Illinois GO bnds ser2006	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Tr(Metro Wtr Reclamation Dist of Greater Chicago)serDCI2008-052 GOfdgbnds serB	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Tr(Atlanta)serDCI2008-056 wtr & wastewtr revbnds ser2004	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Tr(Massachusetts Bay TransAuth)serDCL 2008-056 rs sales tax bnds ser2006A	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Tr(Metro Wtr Reclamation Dist of Greater Chicago)serDCI2008-052 GOfdgbnds serB	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Tr(New York State)serDCI2008-056 Urban Dev Corp t personal hcom tax revbnds ser2004A-2	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Tr(Houston)endeoptioncerts/ bnds	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Indiana Hlth & Educ Fa Fincg Auth(Indiana University Health)hospVRDBser2005A(AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
San Francisco City & County Airport Commissio(San Francisco International Airport)VRDB(AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
San Francisco City & County Airport Commissio(San Francisco International Airport)VRDB(AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
San Francisco City & County Airport Commissio(San Francisco International Airport)VRDB(AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative



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San Francisco City & County Airport Commission (San Francisco International Airport VRD (BAGM))	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Austrian Airport VRD (BAGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Austrian Airport VRD (BAGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Austrian Airport VRD (BAGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Dexia Certs Tr (California) Ser 2008-046 GOfdgbnds	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
Westland Wtr Dist Adjrate GOfdgbnds COP Ser 2008A	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
Iowa Fin Auth Multifamily Hsgbnds 2008 Ser A (AMT-var rate)	AA/A-1	AA/A-1 N.M.	Stable	Negative
New York City Adjrate GOfdgbnds fiscal 2008 Ser L-subseries L-5	AA/A-1	AA/A-1 N.M.	Stable	Negative
Dexia Certs Tr (New Jersey) Transp Trus Fd Auth Ser 2008-041 Transpysbnds Ser 2006	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
Dexia Certs Tr (Massachusetts) Ser 2008-042 GOfdgbnds 2006 Ser C	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
Dexia Certs Tr (Massachusetts) Bay Transp Auth Ser 2008-044 Sales Taxbnds 2007 Ser A-1	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
Dexia Certs Tr (New Jersey) Transp Trus Fd Auth Ser 2008-040 Transpysbnds Ser 2006	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
Northern California Pwr Agwarratedem bnds (Hydroelect Number One Rev Bnds Ser 2008B)	A/A-1	A/A-1 N.M.	N.M.	Negative
Northern California Pwr Agwarratedem bnds (Hydroelect Number One Rev Bnds Ser 2008A)	A/A-1	A/A-1 N.M.	N.M.	Negative
New York City GO VRD (Taxable) Subser 1-12 Ser 2008J	AA/A-1	AA/A-1 N.M.	Stable	Negative
New York City GO VRD Subser 1-5 Ser 2008J	AA/A-1	AA/A-1 N.M.	Stable	Negative
Dexia Certs Tr Ser 2008-036 California GOfdgbnds	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
Dexia Certs Tr Ser 2008-036 New Jersey Transp Trus Fd Auth Transpysbnds Ser 2006	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
Dexia Certs Tr Ser 2008-034 Metropolitan Transp Auth Transprevbnds Ser 2006B	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
Dexia Certs Tr Ser 2008-032 Sch Dist of Detroit Sch bldg and site impbnds unlt d tax GO Ser 2001A	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
San Diego Cnty Regl Transp Con Sales Tax revbnds Ser C&D	AAA/A-1	AAA/A-1 N.M.	Stable	Negative
Long Island Pwr Auth ARS	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Harris Cnty Hlth Fd Dev Corp (Memorial Hermann Health Care System) Hosp VRD Ser 2008A (BAGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Clark Cnty Las Vegas McCarran Intl Arpt (XAGM) Arpt	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Texas Vets Land Brd (Texas) Vets Hsg GO Equiv	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Dexia Certs Tr Ser 2008-024 Commonwealth of Massachusetts GOfdgbnds 2006 Ser B	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
Dexia Certs Tr (Massachusetts) Ser 2008-026 Commonwealth of Massachusetts GOfdgbnds 2006 Ser B	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
Dexia Certs Tr (Massachusetts) Ser 2008-026 Commonwealth of Massachusetts GOfdgbnds 2006 Ser B	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
Dexia Certs Tr Ser 2008-012 New Jersey Transp Trus Fd Auth Transpysbnds	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
Dexia Certs Tr Ser 2008-016 Puerto Rico Elec Pwr Auth pwr rev rfdgbnds Ser VV	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Dexia Certs Tr Ser 2008-014 Massachusetts Wtr Resource Auth gen revbnds Ser 2007A	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative

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Dexia Certs Srser 2008-016 Massachusetts Wtr Resource Authn revrfdg bndsr 2007B	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Sr (Philadelphia Sch Dist) ser 2008-016 PAST Pub Sch Bldg Authschlserev bndsr 2006B	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Srser 2008-016 Massachusetts Bay Transp Authsales sr tax bndsr 2004B	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Srser 2008-016 Puerto Rico Hwy & Transp Auth revrfdg bndsr CC	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Dexia Certs Srser 2008-010	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Srser 2008-011	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Srser 2008-009	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Pasco Cnty solid waste disp & resreco W RDBs 2008A (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Dexia Certs Srser DCI 2008-006 Massachusetts Wtr Resource Authn revrfdg bndsr 2007A and B	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Dexia Certs Sr (Garde State Pres Trust) Trser DCL 2008-001e Gardest operspace and farmland pres bndsr 2005a	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Orange Cnty Local Transp Auth renewed measurmsubord sales tax rev comm pmts (Ltd Tax Bnds) ser A & B	A-1	A-1	N.M.	N.M.	Negative
South Carolina Obs Econ Dev Auth (Bor Secour Health System) Inc. hosp/ RDB ser 2008A (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
California Ccomp prgr	A-1	A-1	N.M.	N.M.	Negative
Montgomery Cnty (Kettering Health Network) Obligated Group hosp/ RDB ser 2008A & B (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Dexia Certs Sr (Lambe St. Louis Intl Arpt) Series 2007-004 Reto the City of St. Louis Missouri Airpor Rev Bnds Ser 2007A	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Pennsylvania Hsg Fin Agys single fam mtgrev bndsr 2007-100C	AA+/A-1	AA+/A-1	N.M.	Negative	Negative
Illinois State Toll Highway Authority/ RDO prrity ser 2007A2	AA-/A-1	AA-/A-1	N.M.	Stable	Negative
Stockton Pub Finc Auth (Stockton Use Rev Bnds Building Acquisition Financing Project) ser 2007B (ASSUREDITY)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Stockton Pub Finc Auth Lse Rev Bnds (Stockton Building Acquisition Financing Project) ser 2007A (ASSUREDITY)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Texas Vets Land Brd (Texas) Veterans SCEquiv	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Dexia Certs Sr, ser 2007-002 Massachusetts Wtr Res Authn revrfdg bnds 2007 Ser B	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Put FLOATS/RITES ser PT-1000 Outfit opt tax-excpt ser PT-4406 Massachusetts Bay Transp Auth sr	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Oregon State of Oregon CQ Veterans Welfare 1988B	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Poway Unif Sch Dist Pub Fing Auth lseser 2007 (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Oregon CQ Veterans welfare (varate) 1985 Dexia Cred Loc Liquid Prov)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Colorado Springs V R D util syssublien rev bnds	AA/A-1	AA/A-1	N.M.	Stable	Negative
Pennsylvania Hsg Fin Agy rev bndsr 2007-99C	AA+/A-1	AA+/A-1	N.M.	Negative	Negative
Charlotte-Mecklenburg Hospital Authority hosp/ RDB ser 2007D- (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Denver City & County Department of Aviation (Denver International Airport) (ASSUREDITY)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative

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TexasVetsLandBrd(Texas)VetsHsgGCEquiv	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	
IowaFinAuthvarratemultifamhsg	AA/A-1	AA/A-1 N.M.	Stable	Negative	
GainesvilleHallCountyDevelopmentAuthority(GHCDA EcdDevCorpProj)	A/A-1	A/A-1 N.M.	N.M.	Negative	
PennsylvaniaHsgFinAgysrevbndsser2007-980ue 10/01/2037	AA+/A-1	AA+/A-1 N.M.	Negative	Negative	
OregoDepbTranspwyUserTaxrevSubLien	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	
OregoDepbTranspwyUserTaxrevSubLien	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	
OregoDepbTranspwyUserTaxrevSubLien	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	
EverettPubFacDist(Everett)varrateprojrevbnds	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	
MarylandStadAuthserev(Maryland)FootballStadium Issue)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	
OrangeCntyHlthFacAuth(OrlandHealth)hospVRDGer 2007A1&2(AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	
BethlehemAreaSchDistGOVRDser2007(AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	
GeorgiaOvarratebnds	AAA/A-1	AAA/A-1 N.M.	Stable	Negative	
OregonRateGCbnds(VeteranWelfare)1987(Dexia CredLocLiqudProv)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	
OregonGCbnds(VeteranWelfare)1986(Dexia CredLoc LiqudProv)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	
TexasVetsLandBrd(Texas)GCEquiv	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	
TexasVetsLandBrd(Texas)GCEquiv	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	
MississippiDevBank(Mississippi)HarrisonCntyUtilAuth WstwrTreatmentSysRevRfdgBndProjmorabblig (AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	
NewYorkCityTransitionFinAuthfuturetaxsecuredbnds (adjratebnds)	AAA/A-1	AAA/A-1 N.M.	Stable	Negative	
OxnardFinCgAuth(Oxnard)VRDBsserev2006(Civic CentePhase2 Project)(AMBAC)	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative	N.M.
ButlerCntyGenAuth(SouthBulteSchDist)GOVRDGer 2006(AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	
Merrill LynchPutFLOATs/RITESerPT-1000 (MassachusettsBayTransAuth)putfloatopttax-excpts serPT-3616td09/21/2006ue07/01/2025	AAA/A-1	AAA/A-1 N.M.	N.M.	Negative	
PennsylvaniaHsgFinAgysinfammtgrevbndsser 2006-95C	AA+/A-1	AA+/A-1 N.M.	Negative	Negative	
TyleIndpSchDistvarrateunltdtaxschldgdbndsser 2006A	AAA/A-1	AAA/A-1 N.M.	Stable	Negative	
Winston-SalemVRDBSOPs	AAA/A-1	AAA/A-1 N.M.	Stable	Negative	
PennsylvaniaHsgFinAgysinfammtgrevbnds(VaRate DemObligations)ser2006-94Btd07/20/2006ue 04/01/2027	AA+/A-1	AA+/A-1 N.M.	Negative	Negative	
LasVegasVWtrDistGQLmtdTaxAdjuStablRatewtr Improbndsser2006Ctd07/20/2006ue06/01/2036	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	
LasVegasVWtrDistGQLmtdTaxAdjuStablRatewtr Improbndsser2006Btd07/20/2006ue06/01/2036	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	
PennsylvaniaHsgFinAgysinfammtgrevbndsser 2006-93B	AA+/A-1	AA+/A-1 N.M.	Negative	Negative	
RockwallhdpSchDistTexasPSF	AAA/A-1	AAA/A-1 N.M.	Stable	Negative	
OregoDepbTranspwyusertaxrevsubordienbnds (varate)ser2006B-1td06/14/2006ue11/15/2026	AA+/A-1	AA+/A-1 N.M.	Stable	Negative	

### Rating Actions Taken On 387 Dexia Credit Local LOC- And Liquidity Facility-Backed Public Finance Issues

Oregon Dept of Transportation	user tax rev sub bonds	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Highland County Health Facilities Authority (Advertiser Health System/Sunbelt Obligated Group)	OSP/VRDBser2006A (FSA)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Massachusetts	GOVRDBser2006A	AA/A-1	AA/A-1 N.M.	POSITIVE	Negative
Texas Vets Land Bnd (Texas SCEquiv		AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Montgomery County (Kettering Health Network Obligated Group)	OSP/VRDBser2006 (AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Merrill Lynch Put FLOATs/RITESerPT-1000 Long Beach Harbo Dept resident tax-exceptserPT-334re Long Beach Harbo DeptserreDCL-190		AAA	AAA N.M.	N.M.	Negative
Merrill Lynch Put FLOATs/RITESerPT-1000 Long Beach Harbo Dept putfltgopttax-exceptserPT-334re Long Beach Harbo ser9reDCL-190		AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
New York City GOBndserH		A/A-1	A/A-1 N.M.	N.M.	Negative
Chicago (Chicago O'Hare International Airport)rdlien VRDBser2005D		AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
Virginia Pub Bldg Auth (Virginia pubfacs VRDBs	2005	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Merrill Lynch Put FLOATs/RITESerPT-1000 putfloatopt taxxrcptserPT-3272 St of New Jersey GOfdgbnds serN		AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
Merrill Lynch Put FLOATs/RITESerPT-1000 resident tax excrptserPT-3272 Dre St of New Jersey GOfdgbnds serN		AAA	AAA N.M.	N.M.	Negative
Texas Vets Land Bnd (Texas SCEquiv		AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Merrill Lynch Put FLOATs/RITESerPT-1000 (Ken Cnty) putfltgopttaxexrcptserPT-3242 Ken Cnty Bldg Auth bldgauthrfdgbndsevbnds		AAA/A-1	AAA/A-1 N.M.	N.M.	Negative
New York City Mun Wtr Fin Auth WS(2nd gen resolution)		AA+/A-1	AA+/A-1 N.M.	Stable	Negative
New York City Mun Wtr Fin Auth WS(2nd gen resolution)		AA+/A-1	AA+/A-1 N.M.	Stable	Negative
San Diego Cnty Regl Transp Consuors sales tax rev coml papnts (Limited Tax Bnds)ser2005B		A-1	A-1 N.M.	N.M.	Negative
Kentucky Asse Liability Comn (Kentucky genfd		A+/A-1	A+/A-1 N.M.	N.M.	Negative
New Jersey Hsg & Mtg Fin Ags infamhs grevbnds ser 2005R due 04/01/2038		AA/A-1	AA/A-1 N.M.	Stable	Negative
New Jersey Hsg & Mtg Fin Ags infamhs grevbnds ser 2005Q dtd 09/29/2006 due 04/01/2032		AA/A-1	AA/A-1 N.M.	Stable	Negative
New Jersey Hsg & Mtg Fin Ags infamhs grevbnds ser 2005P		AA/A-1	AA/A-1 N.M.	Stable	Negative
Chicago GOVRDBser2005D (AGM)		AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Austinarpt/VRDB (AGM)		AA+/A-1	AA+/A-1 N.M.	Stable	Negative
New York City Transitional Fin Auth adjratre cov bonds fiscal 2003 ser3 subse8C		AAA/A-1	AAA/A-1 N.M.	Stable	Negative
Merrill Lynch Put FLOATs/RITESerPT-1000 Beverly Hills Unif Sch Dist putfloatopttaxexrcptserPT-3010 dtd 07/14/2006 due 02/01/2022		AA/A-1	AA/A-1 N.M.	N.M.	Negative
Merrill Lynch Put FLOATs/RITESerPT-1000 Rowland Unif Sch Dist resident tax-exceptserPT-2985-C dtd 07/07/2006 due 09/01/2020		AAA	AAA N.M.	N.M.	Negative
Oregon Veterans Welfare Bonds ser84 due 12/01/2035		AA+/A-1	AA+/A-1 N.M.	Stable	Negative

Rating Actions Taken On 387 Dexia Credit Local LOC- And Liquidity Facility-Backed Public Finance Issues

Merrill Lynch Put FLOATS/RITESerPT-1000 State of California resident tax-exemptserPT-283re State Of California for purposes of Bonds	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Put FLOATS/RITESerPT-1000 State of California putfloatopttax-exemptserPT-283re State Of California for purposes of Bonds	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Forsyth Cnty Wtr & Swg Auth (Forsyth Cnty) arraterev bnds (Forsyth Cnty) ser 2005 Blue 04/01/2035	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Merrill Lynch Put FLOATS/RITESerPT-1000 Philadelphia Sch Dist resident tax-exemptserPT-2793 dtd 05/26/2005 due 04/01/2013	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Put FLOATS/RITESerPT-1000 Philadelphia Sch Dist putflt opttax-exemptserPT-2793 dtd 05/26/2005 due 04/01/2013	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Merrill Lynch Put FLOATS/RITESerPT-1000 Pleasantty Sch Dist resident tax-exemptserPT-2783 dtd 05/19/2005 due 02/01/2023	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Put FLOATS/RITESerPT-1000 Pleasantty Sch Dist putfloatopttax-exemptserPT-2783 dtd 05/19/2005 due 02/01/2023	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Pennsylvania Hsg Fin Agys infam tgre v bnds ser 2005-88 B dtd 05/24/2005 due 10/01/2036	AA+/A-1	AA+/A-1	N.M.	Negative	Negative
Triborough Bridge & Tunnel Authority	AA-/A-1	AA-/A-1	N.M.	Stable	Negative
New Jersey Hsg & Mtg Fin Agys infam tgre v bnds ser 2005 O	AA/A-1	AA/A-1	N.M.	Stable	Negative
New Jersey Hsg & Mtg Fin Agys infam tgre v bnds ser 2005 N	AA/A-1	AA/A-1	N.M.	Stable	Negative
Merrill Lynch Put FLOATS/RITESerPT-1000 Henry Cnty Wtr & Swr Auth resident tax-exemptserPT-2583 A,B,C dtd 03/24/2005 due 02/01/2026	A	A	N.M.	N.M.	Negative
Merrill Lynch Put FLOATS/RITESerPT-1000 Henry Cnty Wtr & Swr Auth putflt opttax-exemptserPT-2583 dtd 03/24/2005 due 02/01/2025	A/A-1	A/A-1	N.M.	N.M.	Negative
Connecticut GO	AA/A-1	AA/A-1	N.M.	Stable	Negative
Merrill Lynch Put FLOATS/RITESerPT1000 resident tax-exemptserPT254re Dorm Auth of the st of NY personal income tax dtd 3/3/05 due 3/15/29	AAA	AAA	N.M.	N.M.	Negative
Merrill Lynch Put FLOATS/RITESerPT-1000 New York State putflt opttax-exemptserPT-254re Dorm Auth of the st of NY personal income tax	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
New York St Hsg Fin Agy (NY SEcon Dev & Hsg) VRDBt personal income taxserC	AAA/A-1	AAA/A-1	N.M.	Stable	Negative
Merrill Lynch Put FLOATS/RITESerPT-1000 (Massachusetts Bay Transp Auth) putflt opttax-exemptserPT-245re Massachusetts Bay Transp Auths	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
New York St Urban Dev Corp New York State PIT VRDB	AAA/A-1	AAA/A-1	N.M.	Stable	Negative
Oregon 2004 govt welfare bnds ser 83 dtd 12/02/2004 due 12/01/2039	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Vermont Hsg Fin Agys infam tgre v bnds ser 21A (FSA)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Texas Vets Land Brd (Texas) Vets Hsg GCEquiv	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Texas Vets Land Brd (Texas) Vets Hsg GCEquiv	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Merrill Lynch Put FLOATS/RITESerPT-1000 Illinois Regl Transp Auth resident tax-exemptserPT-239 dtd 10/07/2004 due 07/01/2024	AAA	AAA	N.M.	N.M.	Negative

Rating Actions Taken On 387 Dexia Credit Local LOC- And Liquidity Facility-Backed Public Finance Issues

Merrill Lynch Put FLOATS/RITES SerPT-1000 Illinois Regl Trans Auth put flt opttax-excptsserPT-2394 10/07/2004 due 07/01/2024	AAA/A-1	AAA/A-1	N.M.	N.M.	Negative
Nassau Health Care Corp (Nassau County GOVRDBs (AGM))	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Hesperia Unif Sch Dist cert of part (Interin Sch Fd Fdg Prog VRDB Ser 2004 (AGM))	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
New York City var rated embndsser 2004 H-5	A/A-1	A/A-1	N.M.	N.M.	Negative
Perris Un High Sch Dist cert of part (2003 Sch Fing Proj) (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Triborough Bridge & Tunnel Authority 1st lien VRDO	AA-/A-1	AA-/A-1	N.M.	Stable	Negative
Michigan St Hsg Dev Auths infam mtg VRDB Ser 2003 C (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Michigan St Hsg Dev Auths infam mtg VRDB Ser 2003 D (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Texas Vets Land Brd (Texas) Veterans SO	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Minneapolis GOVRDBs	AAA/A-1	AAA/A-1	N.M.	Stable	Negative
Huntington Beach Un High Sch Dist cert of part (2003 Sch Fdg Fdg Prog ser 2003 (AGM))	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Mansfield Indpt Sch Dist PSF	AAA/A-1	AAA/A-1	N.M.	Stable	Negative
New Jersey Turnpike Authority VRDB Ser 2003 C (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Indiana Fin Auth (Indiana University Health) hosp VRDB Ser 2003 (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
New Jersey Turnpike Authority VRDB Ser 2003 C (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Long Island Pwr Auth thelecsys gen VRDB Ser 2003 H (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Long Island Pwr Auth thelecsys gen VRDB Ser 2003 D (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Orlando Orange County Expressway Authority expwy VRDB Ser 2003 D (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Orlando Orange County Expressway Authority expwy VRDB Ser 2003 C1 (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Phoenix Civic Imp Corp ptrs sys rev bnd antmtsser 2003 B due 04/03/2033	A-1	A-1	N.M.	N.M.	Negative
Kansas Dept of Transp adjt den hwy revrfdg bndsser 2002 D dtd 12/17/2002 due 03/01/2012	AAA/A-1	AAA/A-1	N.M.	Stable	Negative
Russell Boro Secours Health System Inc. hosp VRDB Ser 2002 B (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
Venice Boro Secours Health System Inc. hosp VRDB Ser 2002 B (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
New York City Transitional Fin Auth future tax VRDB Secd bnd fiscal 2003 ser C sub-se C3	AAA/A-1	AAA/A-1	N.M.	Stable	Negative
California Dept of Wtr Resources pwr supp VRDB Ser 2002 C-1 (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
California Dept of Wtr Resources pwr supp VRDB Ser 2002 C-7 (AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
New York City Transitional Fin Auth adjratre cov bndss fiscal 2003 ser 3 subse 8 D dtd 10/01/2002 due 11/01/2022	AAA/A-1	AAA/A-1	N.M.	Stable	Negative
Tulare Porterville Behs Fin Auth (Porterville Un Sch Dist) var rated em cert of part bndss (2002 Refing Projsser 2002 dtd 09/26/2002 due 05/01/2019)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
New York City Transitional Fin Auth reco bndss subser 2 A dtd 09/10/2002 due 11/01/2022	AAA/A-1	AAA/A-1	N.M.	Stable	Negative
New York City Transitional Fin Auth reco bndss subser 2 E dtd 09/10/2002 due 11/01/2022	AAA/A-1	AAA/A-1	N.M.	Stable	Negative

Rating Actions Taken On 387 Dexia Credit Local LOC- And Liquidity Facility-Backed Public Finance Issues

MetropolitanTransAuthdedicatedtaxfdVRDBer2002B (AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
MetropolitanWashingtonArptAuthinsuredliquidity(AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
HarrisburgAuthwtrVRDBer2002C(AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
HarrisburgAuthwtrVRDBer2002B(AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
OrangeCountyBrdofEdvarratecertsofparbnds(EsplanadeAA+/A-1	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Project2002dtd06/27/2002ue06/01/2032(AGM)				
AlaskaHsgFinCorpomentgrevbndsser2002A [AGM/DexiaCreditLocal]	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
NorthernCaliforniaTransmissionAggrebndss (California-OregonTransmissionProj)ser2002Atd 05/01/2002ue05/01/2024(AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
EastBayMunUtilDistwtrsyssuborddevrfdgdbndsser 2002Bue06/01/2026(AGM)	AAA/A-1	AAA/A-1 N.M.	Stable	Negative
EastBayMunUtilDistwtrsyssuborddevrfdgdbndsser 2002Aue06/01/2026(AGM)	AAA/A-1	AAA/A-1 N.M.	Stable	Negative
MassachusettsHsgFinAgysinfamhsgVRDBer88(AMT) (AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
NewYorkCitygobndsfiscal2002subseA-10taxableadj ratebndsdtd11/01/2001ue11/01/2026(AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
NewYorkCitygobndsfiscal2002subseA-6taxexadj ratebndsdtd11/01/2001ue11/01/2026(AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
NewHampshireHlth&EdFacAuth(Dartmouth-HitchcockAA+/A-1	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
ObligatedGroupHospVRDBer2001A(AGM)				
ColoradoHsg&FinAuthclassadjratesingle-farmtg bndsser2003C2004A-B2005A-B2006A2007B2008A	AAA/A-1	AAA/A-1 N.M.	Stable	Negative
SouthernCaliforniaMetroWtrDistwtr	AAA/A-1	AAA/A-1 N.M.	Stable	Negative
SouthernCaliforniaPubPwrAuthsuborddevbnds2001ser A(SouthernTransmissionProj)(AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
NewYorkCityMunWtrFinAuthWS	AAA/A-1	AAA/A-1 N.M.	Stable	Negative
OhioUnivsubgenreptsVRDBer2001(AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
WisconsinHlth&EdFacAuth(Gundersen LutheranVRDO ser2000B(AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
MinneapolisBlockEvarratebndsser2000A dtd 10/26/2000ue03/01/2027	AAA/A-1	AAA/A-1 N.M.	Stable	Negative
WisconsinHlth&EdFacAuth(Gundersen LutheranVRDO ser2000A(AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Minneapolisconventionctrbndsser2000	AAA/A-1	AAA/A-1 N.M.	Stable	Negative
ChicagoBrdofEdGOVRDBer2000D(AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
ChicagoBrdofEdGOVRDBer2000C(AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
ChicagoBrdofEdGOVRDBer2000B(AGM)	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
NewYorkCityMunWtrFinAuthWS	AAA/A-1	AAA/A-1 N.M.	Stable	Negative
MassachusettsBayTransAuthvarrategentranspsys bndsser2000serdtd03/09/2006ue03/01/2030	AA/A-1	AA/A-1 N.M.	Stable	Negative
MarylandStateAuthvart sportsfacslerevrdgdbndsser 1999dtd12/09/1999ue12/15/2019	AA+/A-1	AA+/A-1 N.M.	Stable	Negative
Minneapolisgenobligconvtrctrbndsser1999dtd 06/24/1999ue12/01/2018	AAA/A-1	AAA/A-1 N.M.	Stable	Negative
MarylandStateAuthtaxable sportsfacslere98A	AA+/A-1	AA+/A-1 N.M.	Stable	Negative

*Rating Actions Taken On 387 Dexia Credit Local LOC- And Liquidity Facility-Backed Public Finance Issues*

California TransiFinAuthvarratedemobds(California TransiVarRateFingProgr1997dtd12/17/1997ue 10/01/2027(AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
ParamountUnifSchDistcertsof part(1997SchFaBrFdg Progr1997(AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
MunElecAuthof Georgiadjraterrev(Proj)sublien1994 B-E(AGM)	AA+/A-1	AA+/A-1	N.M.	Stable	Negative
NEWJERSEY ECON DEV AUTH CHAMBERS COGENERATION PARTNERSHIP	A/A-1	A/A-1	N.M.	N.M.	Negative
NewYorkCityGCadjrate(National)	AA/A-1	AA/A-1	N.M.	Stable	Negative
NewYorkCityGCadjrate(National)	AA/A-1	AA/A-1	N.M.	Stable	Negative

N.M.- Notmeaningful.



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**To:** Env-trinity[env-trinity@velocipede.dcn.davis.ca.us]  
**From:** env-trinity  
**Sent:** Thur 8/11/2016 4:30:38 PM  
**Subject:** [env-trinity] Legislative panel OKs audit of huge Delta tunnels  
[Untitled attachment 00049.txt](#)

## **Legislative panel OKs audit of huge Delta tunnels**

**By Don Thompson**

*Associated Press*

SACRAMENTO — Critics of Gov. Jerry Brown's nearly \$16 billion plan to bore two massive tunnels under the Sacramento–San Joaquin River Delta won a state audit of its ongoing costs on Wednesday, though state officials don't expect the audit to delay the project. The Joint Legislative Audit Committee also voted to have California's state auditor investigate prison suicides, University of California spending and certain charter schools that were the subject of a recent investigative series by the Bay Area News Group.

The twin 40-foot tunnels, each 35 miles long, would funnel Sacramento River water south to dry farmland and millions of residents, but are opposed by Delta area lawmakers and others who say it will further harm the environment while siphoning water from Northern California.

"This is one of the largest infrastructure projects ever that the state of California is going to be undertaking," said Democratic state Sen. Lois Wolk, of Davis. Yet the long-term costs remain unclear, said Wolk and eight other lawmakers of both political parties who sought the audit.

The cost is supposed to be covered by water agencies that will benefit and not directly by taxpayers, but Wolk and David Wolfe of the Howard Jarvis Taxpayers Association both predicted that the growing price tag will increase pressure to use public funds.

Department of Water Resources chief counsel Spencer Kenner did not object and said the audit, which lawmakers approved on a 9–2 vote, won't slow the project.

Meanwhile, a recent spike in suicides at the California Institution for Women prompted lawmakers to approve a system-wide audit of suicide prevention policies and practices in the Department of Corrections and Rehabilitation.

Democratic state Sen. Connie Leyva of Chino cited two reported suicides this year at the prison east of Los Angeles, while the rate was eight times the national average for female prisoners in an 18-month period in 2014–15, when The Associated Press first wrote about the spike. There were four suicides and at least 35 attempts during that period.

Diana Toche, the department's undersecretary for health care services, did not object to the unanimously approved audit, but noted the department has already made changes at the prison.

Officials said they increased mental health treatment and suicide prevention efforts. And the wardens at both of California's major women's prisons retired last month after correctional officials said a change in leadership was needed.

State auditors will also examine school districts that are authorizing charter schools outside their boundaries. Democratic Sen. Carol Liu, of La Canada Flintridge, said the districts appeared to authorize the charters to raise money through "oversight fees" and that the charter schools they authorized have student performance scores dramatically below state and county averages. Those problems were highlighted in April's two-part series by the Bay Area News Group. The series revealed that school districts tasked with overseeing online schools by K12 Inc., a Virginia company, have a strong financial incentive to turn a blind eye to poor academic performance because the districts receive a cut of K12 revenue in exchange for the oversight. The audit was approved on an 8–1 vote.

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**BETTY T. YEE**  
**California State Controller**  
Division of Accounting and Reporting

June 1, 2016

District Fiscal Officer  
Westlands Water District  
3130 N. Fresno Street  
P.O. Box 6056  
Fresno, CA 93703-6056

**SUBJECT: 2015-16 Special Districts Financial Transactions Report**

Dear District Fiscal Officer:

This letter provides information regarding the 2015-16 Special Districts Financial Transactions Report (FTR). Government Code (GC) section 53891 was amended and now requires the financial transactions of each local agency to be submitted to the State Controller's Office (SCO) within seven months after the close of the fiscal year. The report shall contain underlying data from audited financial statements prepared in accordance with generally accepted accounting principles, if this data is available.

**The financial reports are due September 28, 2016.** Please submit the following documents:

- Financial Transactions Report
- U.S. Bureau of Census survey form

Please visit [www.sco.ca.gov/ard\\_locinstr\\_districts\\_forms.html](http://www.sco.ca.gov/ard_locinstr_districts_forms.html) for the electronic reporting program, as well as paper reporting forms, instructions, and information. Special District Reporting Unit staff is available if you need assistance with downloading the electronic program.

If filing electronically, your username and password for the electronic reporting program are as follows:

**Username:** Westlands Water District

**Password:** 12411012500

District Fiscal Officer  
June 1, 2016  
Page 2

Please use the following file transfer protocol (FTP) address for submitting electronically:

**FTP Address:** ftp://sco01lgrs:BlackPen48!@ftp.sco.ca.gov

**Top 250 Special Districts**

GC section 12463.1(c) requires the SCO to annually publish specific information regarding the assets, liabilities, and equities from the 250 Special Districts with the largest total revenues.

Your agency has been identified as a potential Special District that may meet the criteria for the 2015-16 report. You are required to complete the following forms:

- Consolidated Balance Sheet – Assets
- Consolidated Balance Sheet – Liabilities and Equity

The addition of GC section 12463.2 (Chapter 781, Statutes of 2014) requires local government agencies (counties, cities, and special districts) to report information relating to the imposition of each locally assessed parcel tax on the SCO annual FTR. Please visit [http://www.sco.ca.gov/ard\\_locinstr\\_ParcelTaxRequirements\\_forms.html](http://www.sco.ca.gov/ard_locinstr_ParcelTaxRequirements_forms.html) for more information regarding the reporting of parcel taxes.

Please note that in accordance with GC section 12464, if the reports are not made in the time, form, and manner required or there is reason to believe that a report is false, incomplete, or incorrect, the SCO is authorized to make an investigation to obtain the information required. Any costs incurred by the SCO shall be borne by the district.

GC section 26909 requires that an audit be completed and filed with our office within 12 months after the close of the fiscal year(s) under examination. As an alternative to mailing a hardcopy, you may submit a softcopy by e-mail to [RDA-SDsupport@sco.ca.gov](mailto:RDA-SDsupport@sco.ca.gov).

If you have any questions or need assistance with downloading the electronic program, please contact the Special Districts Reporting Unit by email at [RDA-SDsupport@sco.ca.gov](mailto:RDA-SDsupport@sco.ca.gov) or by telephone at (916) 327-1017, or contact Tatyana Bychkov by email at [tbychkov@sco.ca.gov](mailto:tbychkov@sco.ca.gov) or by telephone at (916) 322-7739.

Sincerely,



RENEE HSZIEH, Manager  
Local Government Reporting Section

Enclosures

## Top Ten Reporting Issues for Special Districts Financial Transactions Report

Major variances require **FOOTNOTES**. If there is an overall reporting change, add an explanation in the Comments form. The footnote panel can be accessed by double-clicking on the field in which the balance was reported.

1. Invalid footnotes will be questioned. Simply noting "Correct," "Confirmed OK," or "increase/decrease" is not acceptable. Please indicate what caused the variance (e.g., "New AB 1234 law enforcement grant")
2. All **DEBT** reported must have Principal and Interest (P&I) payments or, if none, footnotes to explain why there are no current year payments.
  - Long-Term Debt
    - *Principal Amount Issued During Fiscal Year*
      - Report the total amount of principal **issued** during the fiscal year on the Long-Term Debt form.
      - Use a separate form for each debt issued.
      - For **Non-Enterprise Activities**, the principal amount issued must also be reflected on the Non-Enterprise Activity's Revenues, Expenditures, Sources and Uses form on the Proceeds of Long-Term Debt line.
    - *Principal Amount Matured During Fiscal Year*
      - Report the amount of principal **paid** during the fiscal year on the Long-Term Debt form. Do **not** include the current portion of principal amounts that are payable in the following fiscal year or the interest payment during the fiscal year.
      - For **Non-Enterprise Activities**, the principal payments reported must also be reflected on the Non-Enterprise Activity's Revenues, Expenditures, Sources and Uses form on the Retirement of Long-Term Debt line.
    - *Interest Payment During the Fiscal Year*
      - Report interest payments on the Interest on Long-Term Debt line on the Revenues, Expenditures, Sources and Uses form of the non-enterprise or enterprise activity that relates to the debt.
  - Other Long-Term Debt
    - Do not include liability type debts that have no P&I payments [e.g., Compensated Absences and Other Post-Employment Benefits (OPEB)] or interfund loans (e.g., copiers, vehicles, etc.) on the Long-Term Debt form as Other long term indebtedness.
3. Include a footnote to explain the reason for a **PRIOR PERIOD ADJUSTMENT** exceeding 20% of the Fund Equity, Beginning of Period.
4. The **ACTIVITY TYPE** must reflect the services the Special District provides. Select the type of non-enterprise/enterprise activity for which this report is being prepared. If preparing a paper report, select the appropriate non-enterprise activity from the list on page 12 of the Special District Reporting Instructions.

If the Special District has any debt reported on the debt forms, the activity reported on the debt form must match the activity on the non-enterprise/enterprise form (e.g., Fire Protection activity reported on the non-enterprise form must have Fire Protection selected as the activity type on the debt form).

5. The **OTHER** fields on the revenue and expenditure forms are for items that do not apply to a hard-coded field elsewhere on the form. Please review all of the fields on the forms before reporting an item as “other,” and provide a footnote.
6. **SPECIAL ASSESSMENT, MELLO-ROOS AND MARK-ROOS BONDS**
  - Do not include interest or principal payments for 1911 Act Bonds, 1915 Act Bonds on the Revenues, Expenditures, Sources and Uses form. Report transactions and balances relating to these bonds on the Special Assessments, Mello-Roos Long-Term Debt form only.
  - Report assessments made for the payoff of bonds related to the Mello-Roos and Mark-Roos Bond Acts on the Special Assessments line on the Revenues, Expenses and Changes in Fund Equity form.
7. Report **RESIDUAL EQUITY TRANSFERS** for non-recurring or non-routine transfers of equity to **other agencies** only, for example, transfers of residual balances of a dissolved district which was assumed by a new city. Include a footnote to explain why a transfer was made. Report transfers between funds within the agency as Operating Transfer In/Out on the Revenues, Expenditures, Sources and Uses form.
8. The **APPROPRIATIONS LIMIT INFORMATION** form must be completed by all special districts that receive property taxes and are subject to the provisions of California Constitutional Article XIII B. Refer to California Constitutional Article XIII B for specific information on this requirement. If the Special District is exempt from having an appropriation, note so in the General Comment form. Please note that failure to report your Appropriations Limit might affect your mandated cost reimbursement.
9. A Special District that has **NO FINANCIAL TRANSACTIONS** during the year must file the Cover Page form and the General Information form of the Special Districts Financial Transactions Report, stating “No Activity” on the Cover Page form. A Special District that has no financial transactions but has **outstanding debt** taken out in the Special District’s name, must report the debt and any debt payments on the Long-Term Debt and Revenues, Expenses, and Changes in Fund Equity forms.
10. **RUNNING A LITTLE BEHIND?** We cannot grant extensions. You may submit your **REPORT** via file transfer protocol (FTP). If you are unable to submit your report via FTP, please contact the Special Districts Reporting Unit by email at [RDA-SDsupport@sco.ca.gov](mailto:RDA-SDsupport@sco.ca.gov) or by telephone at (916) 327 1017 for other options. You must submit the signed Cover Page and the Bureau of Census form by mail.

## Supplement to the Annual Report of Special Districts

<b>Special District ID Number:</b>	
<b>Name of District:</b>	

Mark the appropriate box below to indicate the ending date of your agency's fiscal year.  
Report data for that period only.

- |   |  |  |                                     |
|---|--|--|-------------------------------------|
| <input type="checkbox"/> July 2015      | <input type="checkbox"/> October 2015  | <input type="checkbox"/> January 2016  | <input type="checkbox"/> April 2016 |
| <input type="checkbox"/> August 2015    | <input type="checkbox"/> December 2015 | <input type="checkbox"/> February 2016 | <input type="checkbox"/> May 2016   |
| <input type="checkbox"/> September 2015 |  | <input type="checkbox"/> March 2016    | <input type="checkbox"/> June 2016  |

Return this form to the **California State Controller's Office**. If you have any questions regarding this form please contact:

*U.S. Bureau of the Census, Michael Osman, 1-800-242-4523*

### A. Personnel Expenditures

Please report your government's total expenditures for salaries and wages during the year, including amounts paid on force account construction projects.

<b>Z00:</b>	\$
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### B. Capital Outlay Expenditures for Enterprise Activities

Please report your government's capital outlay expenditures for the following enterprise activities, if applicable:

Airport Enterprise	Amount
Land and Equipment (Census Code G01)	\$
Construction (Census Code F01)	\$

Electric Enterprise	Amount
Land and Equipment (Census Code G92)	\$
Construction (Census Code F92)	\$

Harbor and Port Enterprise	Amount
Land and Equipment (Census Code G87)	\$
Construction (Census Code F87)	\$

Hospital Enterprise	Amount
Land and Equipment (Census Code G36)	\$
Construction (Census Code F36)	\$



<b>Waste Disposal Enterprise</b>	<b>Amount</b>
Land and Equipment (Census Code G80)	\$
Construction (Census Code F80)	\$

<b>Water Enterprise</b>	<b>Amount</b>
Land and Equipment (Census Code G91)	\$
Construction (Census Code F91)	\$

U.S. Bureau of the Census – Revised 6/2009



**BETTY T. YEE**  
**California State Controller**

February 16, 2017

Thomas W. Birmingham, General Manager  
Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703

Dear Mr. Birmingham:

The State Controller's Office (SCO) performed a limited review of the Westlands Water District's state funding relating to the State Revolving Fund Loan Program – Westlands Water District Irrigation System Improvement Project for the period of March 1, 2013, through February 28, 2015.

The SCO performed this review pursuant to Government Code section 12410 which requires the Controller to "...superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment."

The objective of our review was to evaluate the district's system of internal accounting and administrative controls, relating to state funds, and determine whether the district accounted for and expended its state funds in accordance with Government Code section 12410.

Based on our preliminary analytical procedures performed and inquiries made, nothing came to our attention that identifies concerns related to the use of the State Revolving Fund Loan Program; therefore, we will not conduct further review on the Loan Program at this time. However, a follow-up review might be conducted later.

We did not audit the district's financial statements. We limited our review scope to planning and performing review procedures necessary to obtain limited assurance that the district accounted for and expended its state funds in accordance with Government Code section 12410. Our review is not intended to and does not constitute an audit performed in accordance with applicable grantor's requirements for the above-mentioned state funds. Therefore, this review was not sufficient in detail to express an opinion on the district's compliance with applicable funding provisions for the loans. Accordingly, the SCO does not express such an opinion.

We thank the district staff and management, who were helpful throughout our review process.

Thomas W. Birmingham, General Manager  
February 16, 2017  
Page 2

If you have any questions or require additional information, please contact Efren Loste, Interim Chief, Local Government Audits Bureau, by telephone at (916) 324-7226 or by email at [eloste@sco.ca.gov](mailto:eloste@sco.ca.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Brownfield". The signature is fluid and cursive, with the first name "Jeffrey" and last name "Brownfield" clearly distinguishable.

JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/lr

17791

cc: Don Peracchi, Board President  
Westlands Water District  
Bobbie Ormonde, Director of Finance and Administration (via email)  
Westlands Water District  
Efren Loste, Interim Bureau Chief  
Division of Audits  
State Controller's Office



UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**  
100 F Street, N.E.  
Washington, D.C. 20549

OFFICE OF  
THE SECRETARY

MAR 09 2016

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Louie David Ciapponi  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625

Re: In the Matter of Westlands Water District, Thomas W. Birmingham,  
and Louie David Ciapponi

Dear Mr. Ciapponi:

Please find enclosed the Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (the "Order") in the above-referenced matter. The Commission has determined to accept your Offer of Settlement, dated January 28, 2016, and accordingly, has issued the enclosed Order. The sanctions and cease-and-desist order imposed by the Order shall be effective immediately.

If you have any questions or wish to discuss any aspect of the proceedings, you may communicate with Brian P. Knight, Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104, at (415) 705-2364.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brent J. Fields".

Brent J. Fields  
Secretary

Enclosure

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 10053 / March 9, 2016**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3752 / March 9, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17162**

**In the Matter of**

**WESTLANDS WATER  
DISTRICT, THOMAS W.  
BIRMINGHAM, and  
LOUIE DAVID CIAPPONI**

**Respondents.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933, MAKING FINDINGS, AND  
IMPOSING A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), against Westlands Water District ("Westlands"), Thomas W. Birmingham, and Louie David Ciapponi (collectively "Respondents").

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

### III.

On the basis of this Order and Respondents' Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. This matter involves misrepresentations and omissions by Westlands in the Official Statement for its October 2012 offering of \$77 million in Refunding Revenue Bonds, Series 2012A (the "2012 Bonds"). The Official Statement for the 2012 Bonds was misleading in its treatment of one key metric for Fiscal Year 2010: Westlands' debt service coverage ratio. The debt service coverage ratio is important to investors because it signals whether an issuer has sufficient ability to meet its debt service obligations. In prior bond offerings, Westlands had covenanted to fix and collect water rates at least sufficient to generate net revenues equal to at least 125% of its debt service payments for that year. Failure by Westlands to meet that 1.25 debt service coverage ratio could be a technical default on its bonds which could lead to undesirable outcomes, including higher interest rates on future bonds, ratings downgrades, and an inability to sell bonds in the following fiscal year.

2. The Official Statement for the 2012 Bonds contained a table representing that Westlands had met or exceeded the required debt service coverage ratio for each of the prior five years.<sup>2</sup> For fiscal year 2010, however, the revenue and coverage ratio reported in the table were misleading because Westlands failed to disclose: (1) that it had engaged in extraordinary accounting transactions in 2010 *solely* to recognize additional revenue for purposes of calculating the debt service coverage ratio without raising rates on customers, and (2) the impact of a 2012 prior period adjustment to account for expenses that would have decreased revenue in 2010 and negatively affected the ratio.

3. In the latter half of fiscal year 2010, Westlands staff informed Birmingham and Ciapponi that, because of reductions in water supply, Westlands would not generate sufficient revenue to achieve a 1.25 debt service coverage ratio. At Ciapponi's direction, Westlands staff consulted with its independent auditor about accounting transactions that could be implemented to avoid raising water rates in order to meet a 1.25 debt service coverage ratio. Subsequently, Westlands staff, including Birmingham and Ciapponi, advised Westlands' Finance and Administration Committee that it recommend to Westlands' Board of Directors (the "Board") to approve two accounting transactions to recognize additional revenue. These transactions and their effect on revenue and the debt service coverage ratio were not disclosed in the Official Statement for the 2012 Bonds. Separately, in 2012, Westlands adjusted the accounting for certain expenses. Had these expenses been recorded in 2010, the 2010 debt service coverage ratio would have been negatively affected. While this prior period adjustment was disclosed in the Official Statement for the 2012 Bonds, its impact on the 2010 debt service coverage ratio was not disclosed. If the effect of the 2010 and 2012 accounting transactions on the debt service

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> Westland's fiscal year ends on February 28. Unless otherwise specified in this Order, references to specific years are to fiscal years.

coverage ratio had been disclosed, Westlands' coverage ratio for 2010 would have been 0.11, rather than the 1.25 which was reported in the Official Statement.

4. As a result of the conduct described herein, Westlands violated Section 17(a)(2) of the Securities Act and Birmingham and Ciapponi caused Westlands' violation.

### **Respondents**

5. **Westlands Water District** is headquartered in Fresno, California and is the largest agricultural water district in California. Westlands is a public agency of the State of California, originally formed in 1952 for the primary purpose of providing irrigation water to customers within the district. Its customers are approximately 700 agricultural land owners and water users and approximately 200 municipal and industrial land owners and water users. Westlands' Board is elected by land owners in the district, and as a result, Westlands is managed by representatives of its customers. For 2014, Westlands had operating revenues in excess of \$120 million.

6. **Thomas W. Birmingham**, age 60, of Sacramento, California, has served as the General Manager of Westlands, the highest executive level position, from October 2000 through the present. He is a member of the State Bar of California and also served as Westlands' General Counsel through May 2010 and was reappointed General Counsel in September 2015.

7. **Louie David Ciapponi** age 64, of Fresno, California, was the Assistant General Manager of Westlands from June 1995 to June 2012. Since June 2012 Ciapponi has been employed as the General Manager of a neighboring water district that had previously been annexed by Westlands. While employed at the other water district, Ciapponi continued to perform many of the same functions for Westlands that he had previously performed. He is also presently serving as Westlands' Secretary, a position he has held since 1995, and was Westlands' Treasurer from 1995 to December 16, 2015.

### **Facts**

#### **Westlands' Rate Covenant**

8. In most years, Westlands purchases the majority of the water it sells to its customers from the United States Bureau of Reclamation ("USBR") and is required to pay a share of USBR's capital costs and operations and maintenance expenses. In drought years such as 2010, the USBR often reduces the quantity of water it makes available to Westlands, forcing Westlands to purchase water from other, more expensive, sources. Westlands charges its customers for the cost of water it sells and collects additional fees both for its own operational expenses and the share of the USBR expenses it pays.

9. In prior debt offerings, Westlands had covenanted, to the fullest extent permitted by law, to fix and prescribe, and collect customers' water rates and charges at least sufficient during each fiscal year to yield net revenues equal to 125% of the debt service payable in that fiscal year. The purpose of this covenant is to assure investors and others, including ratings agencies, that Westlands will have sufficient ability to meet its debt service obligations on the

bonds. Westlands has significant incentive to maintain the 1.25 ratio because a failure to do so could preclude Westlands from issuing bonds in the following fiscal year. Failure to maintain the ratio could also result in higher borrowing costs in future debt offerings and could negatively affect Westlands' debt ratings.

10. The Official Statement for the 2012 Bonds included a table reporting the debt service coverage ratio for fiscal years 2008 through 2012. The table contains, among other operating data, columns showing five years of summary income statement information and the ratio for each year, derived from Westlands' audited financial statements, which reflects that Westlands maintained a debt service ratio of exactly 1.25 for 2010. The bond sale transaction closed on October 25, 2012.

Extraordinary Accounting Transactions in Fiscal Year 2010 to  
Increase the Debt Service Coverage Ratio

11. In October 2009, Ciapponi learned that the projected full year revenue for fiscal year 2010 would be approximately \$10 million short of what was required to maintain the 1.25 debt service coverage ratio. Westlands' fiscal year ends February 28, so it had very little time to rectify the revenue shortfall for fiscal year 2010 in order to maintain the 1.25 ratio for that year.

12. In order to meet the ratio, Westlands could have collected additional revenue by raising the water rates or other charges on its customers. This would have meant increasing water rates and land charges by about 11.6%. Westlands decided not to do so because management, including Birmingham and Ciapponi, wanted to minimize the costs on Westlands' customers. Instead, Westlands decided to reclassify certain assets as revenue. Ciapponi instructed Westlands staff to meet with Westlands' independent auditor to discuss this potential alternative to raising water rates. A memo prepared by Westlands employees and sent to Westlands' auditor in November 2009 described the proposal to "reclassify cash reserves or retained earnings" to record additional revenue "in lieu of collecting current revenue while maintaining the required debt coverage ratio." Westlands staff met with the auditor in January 2010. The auditor informed the Westlands staff that he believed the suggested transactions were permissible and subsequently issued an unqualified opinion on Westlands' 2010 audited financial statements. The auditor was not asked whether, or how, disclosure of the transactions should be made in the Official Statement. These reclassification transactions would not increase cash collections and were merely accounting transactions done for the sole purpose of maintaining the ratio.

13. Westlands staff, through Birmingham, as General Manager/General Counsel, and Ciapponi, as Assistant General Manager, presented a memorandum to Westlands' Finance and Administration Committee describing the various accounting transactions that were proposed to achieve a 1.25 debt service coverage ratio. The Finance and Administration Committee decided, based on the recommendation of staff, including Birmingham and Ciapponi, to recommend to the Westlands Board that it approve the reclassification transaction in lieu of increasing rates and charges that would be offset by credits. Subsequently, the Westlands Board approved the Finance and Administration Committee's recommendation.



14. Some of the reclassified assets came from “payable” accounts consisting of amounts that were collected from customers in previous periods but for which revenue was never recorded in the financial statements. The original intent of these accounts was to collect and retain funds to be used for the payment of certain expenses of Westlands and USBR. In the event the funds were not needed in the current fiscal year, they were retained by Westlands until they were needed for the stated purpose or otherwise dispensed at the direction of Westlands’ Board. Westlands decided to reclassify \$8.3 million from these accounts to revenue for 2010. Westlands had never previously reclassified funds from these accounts in a similar manner.

15. In addition, Westlands decided to record \$1.46 million of revenue in 2010 by means of a “return of equity” to landowners in the district. The “equity” came from a reserve fund originally established to ensure debt service payments in future years, related to a 1999 debt issue and had been funded through a rate component of customer charges collected between 1999 and 2002. Together, the two sets of transactions would result in \$9.8 million in additional revenue being recorded, solely to meet the debt service ratio covenant. Without the transactions, Westlands would have reported a debt service coverage ratio of .63.

16. At the public Board meeting at which the transactions were discussed, Birmingham and Ciapponi recommended that the Board approve the transactions. They told the Board that Westlands needed additional revenue to achieve a 1.25 debt ratio and the Board could either increase rates and charges or approve the transactions. When one Board member, who was also a Westlands customer, began to question whether rates and charges in an area in which he owned land would be raised as a result of having to meet the covenant, Birmingham joked that they were engaging in “a little Enron accounting.” Birmingham went on to state: “We’re not collecting any more money from the rate payers, nor are we paying any more money than we would otherwise pay under that the . . . um . . . to pay off the debt. All we’re doing is we’re taking money and saying we are reclassifying it from an account payable to income. And I’m told by Mr. Ciapponi that that satisfies – and he’s vetted it – that that satisfies our debt coverage with the bonds.”

17. The Board voted to approve the transactions, which were recorded as part of the year end closing process for fiscal year 2010. Other than customers who were present at the Board meeting, Westlands’ customers were not made aware that their “equity” had been returned to them. The benefit of these transactions to Westlands and its customers was twofold. First, Westlands avoided reporting a debt service coverage ratio of 0.63 for 2010 and any potential negative consequences associated with failing to meet its covenant under prior bond issuances. Second, Westlands was able to meet the debt service coverage ratio without raising its customers’ water rates.

#### The 2012 Prior Period Adjustment

18. Two years later, and separate from the transactions described above, Westlands changed the way it accounted for advance operations and maintenance payments made to the USBR in 2010 and 2011, classifying them as expenses instead of their original capitalization. Had these expenses been recorded in 2010, Westlands debt service coverage ratio would have been even lower unless Westlands had raised rates and land charges or lowered expenses in

2010. In 2012, when it changed the method by which it accounted for these payments, Westlands recorded a prior period adjustment for the fiscal year 2010 expenses, but in accordance with Generally Accepted Accounting Principles did not restate net revenue for that year. If the payments initially had been recorded as expenses in 2010, net revenue would have decreased and Westlands' debt service coverage ratio for 2010 would have been 0.73 rather than 1.25 (excluding the impact of the 2010 accounting transactions described above).

19. Westlands disclosed this prior period adjustment in a note to its audited financial statements for fiscal year 2012, which were appended to the Official Statement for the 2012 Bonds. However, Westlands did not correct the coverage ratios reported in the Historic Operating Results table for 2010 to account for the adjustment.

20. Westlands did not consider in 2012 whether the debt service coverage ratio reported for 2010 should have been revised as a result of the prior period adjustment. Ciapponi understood that, if the payments made to the USBR in 2010 had been treated in 2010 as an expense, the net revenue for that year would have been reduced, but he did not consider whether it would have affected the 2010 debt service ratio. Similarly, Birmingham was aware of the adjustment but he did not consider its effect on the 2010 debt service ratio.

The Official Statement for the 2012 Bonds Contained False and  
Misleading Statements Concerning the 2010 Debt Service Coverage Ratio

21. The Official Statement for the 2012 Bonds was false and misleading because it represented that Westlands' debt service coverage ratio for 2010 was 1.25 and, therefore, that Westland had complied with its covenants to fix water rates at levels reasonably expected to yield a debt service coverage ratio of 1.25. Westlands did not disclose that the ratio was met only because of the extraordinary transactions undertaken in 2010 to create additional purported revenue, nor did it disclose the effect the 2012 prior period adjustment would have had on the debt service coverage ratio for 2010. Had Westlands disclosed in the Official Statement the combined effect of both the 2010 transactions and the 2012 prior period adjustment, it would have reported its debt service coverage ratio for 2010 as 0.11—less than 10% of what was required. In addition, the failure to disclose the nature of the 2010 and 2012 transactions in the Official Statement masked the fact that Westlands had experienced a significant drop in net revenue in 2010.

22. The dramatic drop in Westlands' 2010 net revenue, its negative effect on the debt service coverage ratio for that year, and the effect of the 2012 prior period adjustment on the 2010 debt service coverage ratio, would have been material to investors in the 2012 Bonds.

Birmingham and Ciapponi Certified the Accuracy of the  
Official Statement on Behalf of Westlands

23. Both Birmingham and Ciapponi were involved in the issuance of the 2012 Bonds and the Official Statement. On behalf of Westlands, both Birmingham and Ciapponi signed the 2012 Bond Purchase Contract with the underwriter. As part of that contract, they certified to the underwriter that the Preliminary Official Statement and the Official Statement "contain no

misstatement of any material fact and do not omit any statement necessary to make the statements contained therein, in light of the circumstances in which such statements were made, not misleading.” Birmingham also made a similar representation in the Closing Certificate he signed on behalf of Westlands.

24. Birmingham received drafts of the Official Statement for the 2012 Bonds. He was aware of the extraordinary 2010 transactions Westlands used to record revenue solely to achieve a 1.25 debt service coverage ratio without raising rates or other charges, but did not take any steps to disclose their effect on the 2010 debt service coverage ratio reported in the Official Statement. Similarly, despite being aware that the 2012 prior period adjustment affected Westland’s net revenue for 2010, Birmingham did not consider whether the 2010 debt service coverage ratio reported in the Official Statement should have been revised.

25. Ciapponi reviewed each draft of the Official Statement as well as the final version. He was aware of the extraordinary 2010 transactions Westlands used to record revenue in order to meet the debt service coverage ratio, but did not take any steps to disclose their effect on the 2010 debt service coverage ratio which was reported in the Official Statement. Similarly, despite being aware that the 2012 prior period adjustment affected Westland’s net revenue for 2010, he did not consider whether the 2010 debt service coverage ratio reported in the Official Statement should have been revised.

### **Legal Discussion**

#### **Respondents’ Violations**

26. Section 17(a)(2) of the Securities Act makes it unlawful “in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.” 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2) and no finding of scienter is required. See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). The Commission has held that the “knew or should have known” standard is appropriate to establish negligence. See KPMG, LLP v. SEC, 289 F.3d 109, 120 (D.C. Cir. 2002). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

27. The Commission may institute cease-and-desist proceedings against any person held to be a cause of violations of the federal securities laws due to acts or omissions such person knew or should have known would contribute to the violation. See Valicenti Advisory Servs., Inc., Inv. Advisors Act Rel. No. 1774, 1998 SEC LEXIS 2497, at \*16, n.11 (Nov. 18, 1998), 53 S.E.C. 1033, 1040 n.11 (Nov. 18, 1998), aff’d, Valicenti Advisory Servs., Inc. v. SEC, 198 F.3d 62 (2d Cir. 1999). Negligence is sufficient to establish a violation for causing the primary violation. See KPMG Peat Marwick L.L.P., Exchange Act Rel. No. 43862, 2001 SEC LEXIS 98, at \*102 (Jan. 19, 2001), 54 S.E.C. 1135, 1185, aff’d, 289 F.3d 109 (D.C. Cir. 2002).

28. Birmingham and Ciapponi each knew, or should have known, that Westlands' revenue and debt service coverage ratio for 2010 as reported in the Official Statement for the 2012 Bonds were misrepresented as a result of the extraordinary transactions recorded in 2010. They were also negligent for failing to consider the effect of the 2012 prior period adjustment on the revenue and the debt service coverage ratio calculation that was reported in the Official Statement for the 2012 Bonds. The negligent conduct of Birmingham and Ciapponi is imputed to Westlands.

29. As a result of the conduct described herein, Westlands violated Section 17(a)(2) of the Securities Act and Birmingham and Ciapponi caused Westlands' violations.

#### **Cooperation and Remedial Efforts**

30. In determining to accept Respondents' offers, the Commission considered the Respondents' cooperation and prompt remedial actions, including the development of written financial disclosures policies, and staff training related to Westlands' debt offerings.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Within ten (10) days of the entry of this Order, Westlands shall pay a civil money penalty in the amount of \$125,000 and Birmingham shall pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Ciapponi shall pay a civil money penalty in the amount of \$20,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made by Ciapponi in the following installments: \$10,000 due ten (10) days from the date of the Order, and \$10,000 due twelve (12) months from the date of the Order. If any payment from Ciapponi is not made by the date the payment is required by this Order, the entire outstanding balance of his civil penalty, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment by the Respondents must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Westlands, Birmingham, or Ciapponi, respectively, as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S. C. §523, that the findings in the Order are true and admitted by Respondents Birmingham and Ciapponi, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Birmingham and Ciapponi under the Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents Birmingham and Ciapponi of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

A handwritten signature in black ink, appearing to read "Brent J. Fields". The signature is fluid and cursive, with the first name "Brent" being more prominent and the last name "Fields" written in a more compact, cursive style.

Brent J. Fields  
Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), on the Respondents and their legal agents.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

Brian P. Knight, Esq.  
San Francisco Regional Office  
Securities and Exchange Commission  
44 Montgomery St, Suite 2800  
San Francisco, CA 94104

Westlands Water District  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625

Mr. Thomas W. Birmingham  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625

Mr. Louie David Ciapponi  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625

Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625  
(Counsel for Westlands Water District, Thomas W. Birmingham, and Louie David  
Ciapponi)



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

1000  
OFFICIAL BUSINESS



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Mr Louie David Ciappeni  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625



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UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**  
100 F Street, N.E.  
Washington, D.C. 20549

OFFICE OF  
THE SECRETARY

MAR 09 2016

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Thomas W. Birmingham  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625

Re: In the Matter of Westlands Water District, Thomas W. Birmingham,  
and Louie David Ciapponi

Dear Mr. Birmingham:

Please find enclosed the Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (the "Order") in the above-referenced matter. The Commission has determined to accept your Offer of Settlement, dated January 28, 2016, and accordingly, has issued the enclosed Order. The sanctions and cease-and-desist order imposed by the Order shall be effective immediately.

If you have any questions or wish to discuss any aspect of the proceedings, you may communicate with Brian P. Knight, Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104, at (415) 705-2364.

Sincerely,

Brent J. Fields  
Secretary

Enclosure

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 10053 / March 9, 2016**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3752 / March 9, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17162**

**In the Matter of**

**WESTLANDS WATER  
DISTRICT, THOMAS W.  
BIRMINGHAM, and  
LOUIE DAVID CIAPPONI**

**Respondents.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933, MAKING FINDINGS, AND  
IMPOSING A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), against Westlands Water District ("Westlands"), Thomas W. Birmingham, and Louie David Ciapponi (collectively "Respondents").

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

### III.

On the basis of this Order and Respondents' Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. This matter involves misrepresentations and omissions by Westlands in the Official Statement for its October 2012 offering of \$77 million in Refunding Revenue Bonds, Series 2012A (the "2012 Bonds"). The Official Statement for the 2012 Bonds was misleading in its treatment of one key metric for Fiscal Year 2010: Westlands' debt service coverage ratio. The debt service coverage ratio is important to investors because it signals whether an issuer has sufficient ability to meet its debt service obligations. In prior bond offerings, Westlands had covenanted to fix and collect water rates at least sufficient to generate net revenues equal to at least 125% of its debt service payments for that year. Failure by Westlands to meet that 1.25 debt service coverage ratio could be a technical default on its bonds which could lead to undesirable outcomes, including higher interest rates on future bonds, ratings downgrades, and an inability to sell bonds in the following fiscal year.

2. The Official Statement for the 2012 Bonds contained a table representing that Westlands had met or exceeded the required debt service coverage ratio for each of the prior five years.<sup>2</sup> For fiscal year 2010, however, the revenue and coverage ratio reported in the table were misleading because Westlands failed to disclose: (1) that it had engaged in extraordinary accounting transactions in 2010 *solely* to recognize additional revenue for purposes of calculating the debt service coverage ratio without raising rates on customers, and (2) the impact of a 2012 prior period adjustment to account for expenses that would have decreased revenue in 2010 and negatively affected the ratio.

3. In the latter half of fiscal year 2010, Westlands staff informed Birmingham and Ciapponi that, because of reductions in water supply, Westlands would not generate sufficient revenue to achieve a 1.25 debt service coverage ratio. At Ciapponi's direction, Westlands staff consulted with its independent auditor about accounting transactions that could be implemented to avoid raising water rates in order to meet a 1.25 debt service coverage ratio. Subsequently, Westlands staff, including Birmingham and Ciapponi, advised Westlands' Finance and Administration Committee that it recommend to Westlands' Board of Directors (the "Board") to approve two accounting transactions to recognize additional revenue. These transactions and their effect on revenue and the debt service coverage ratio were not disclosed in the Official Statement for the 2012 Bonds. Separately, in 2012, Westlands adjusted the accounting for certain expenses. Had these expenses been recorded in 2010, the 2010 debt service coverage ratio would have been negatively affected. While this prior period adjustment was disclosed in the Official Statement for the 2012 Bonds, its impact on the 2010 debt service coverage ratio was not disclosed. If the effect of the 2010 and 2012 accounting transactions on the debt service

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> Westland's fiscal year ends on February 28. Unless otherwise specified in this Order, references to specific years are to fiscal years.

coverage ratio had been disclosed, Westlands' coverage ratio for 2010 would have been 0.11, rather than the 1.25 which was reported in the Official Statement.

4. As a result of the conduct described herein, Westlands violated Section 17(a)(2) of the Securities Act and Birmingham and Ciapponi caused Westlands' violation.

### **Respondents**

5. **Westlands Water District** is headquartered in Fresno, California and is the largest agricultural water district in California. Westlands is a public agency of the State of California, originally formed in 1952 for the primary purpose of providing irrigation water to customers within the district. Its customers are approximately 700 agricultural land owners and water users and approximately 200 municipal and industrial land owners and water users. Westlands' Board is elected by land owners in the district, and as a result, Westlands is managed by representatives of its customers. For 2014, Westlands had operating revenues in excess of \$120 million.

6. **Thomas W. Birmingham**, age 60, of Sacramento, California, has served as the General Manager of Westlands, the highest executive level position, from October 2000 through the present. He is a member of the State Bar of California and also served as Westlands' General Counsel through May 2010 and was reappointed General Counsel in September 2015.

7. **Louie David Ciapponi** age 64, of Fresno, California, was the Assistant General Manager of Westlands from June 1995 to June 2012. Since June 2012 Ciapponi has been employed as the General Manager of a neighboring water district that had previously been annexed by Westlands. While employed at the other water district, Ciapponi continued to perform many of the same functions for Westlands that he had previously performed. He is also presently serving as Westlands' Secretary, a position he has held since 1995, and was Westlands' Treasurer from 1995 to December 16, 2015.

### **Facts**

#### **Westlands' Rate Covenant**

8. In most years, Westlands purchases the majority of the water it sells to its customers from the United States Bureau of Reclamation ("USBR") and is required to pay a share of USBR's capital costs and operations and maintenance expenses. In drought years such as 2010, the USBR often reduces the quantity of water it makes available to Westlands, forcing Westlands to purchase water from other, more expensive, sources. Westlands charges its customers for the cost of water it sells and collects additional fees both for its own operational expenses and the share of the USBR expenses it pays.

9. In prior debt offerings, Westlands had covenanted, to the fullest extent permitted by law, to fix and prescribe, and collect customers' water rates and charges at least sufficient during each fiscal year to yield net revenues equal to 125% of the debt service payable in that fiscal year. The purpose of this covenant is to assure investors and others, including ratings agencies, that Westlands will have sufficient ability to meet its debt service obligations on the

bonds. Westlands has significant incentive to maintain the 1.25 ratio because a failure to do so could preclude Westlands from issuing bonds in the following fiscal year. Failure to maintain the ratio could also result in higher borrowing costs in future debt offerings and could negatively affect Westlands' debt ratings.

10. The Official Statement for the 2012 Bonds included a table reporting the debt service coverage ratio for fiscal years 2008 through 2012. The table contains, among other operating data, columns showing five years of summary income statement information and the ratio for each year, derived from Westlands' audited financial statements, which reflects that Westlands maintained a debt service ratio of exactly 1.25 for 2010. The bond sale transaction closed on October 25, 2012.

Extraordinary Accounting Transactions in Fiscal Year 2010 to  
Increase the Debt Service Coverage Ratio

11. In October 2009, Ciapponi learned that the projected full year revenue for fiscal year 2010 would be approximately \$10 million short of what was required to maintain the 1.25 debt service coverage ratio. Westlands' fiscal year ends February 28, so it had very little time to rectify the revenue shortfall for fiscal year 2010 in order to maintain the 1.25 ratio for that year.

12. In order to meet the ratio, Westlands could have collected additional revenue by raising the water rates or other charges on its customers. This would have meant increasing water rates and land charges by about 11.6%. Westlands decided not to do so because management, including Birmingham and Ciapponi, wanted to minimize the costs on Westlands' customers. Instead, Westlands decided to reclassify certain assets as revenue. Ciapponi instructed Westlands staff to meet with Westlands' independent auditor to discuss this potential alternative to raising water rates. A memo prepared by Westlands employees and sent to Westlands' auditor in November 2009 described the proposal to "reclassify cash reserves or retained earnings" to record additional revenue "in lieu of collecting current revenue while maintaining the required debt coverage ratio." Westlands staff met with the auditor in January 2010. The auditor informed the Westlands staff that he believed the suggested transactions were permissible and subsequently issued an unqualified opinion on Westlands' 2010 audited financial statements. The auditor was not asked whether, or how, disclosure of the transactions should be made in the Official Statement. These reclassification transactions would not increase cash collections and were merely accounting transactions done for the sole purpose of maintaining the ratio.

13. Westlands staff, through Birmingham, as General Manager/General Counsel, and Ciapponi, as Assistant General Manager, presented a memorandum to Westlands' Finance and Administration Committee describing the various accounting transactions that were proposed to achieve a 1.25 debt service coverage ratio. The Finance and Administration Committee decided, based on the recommendation of staff, including Birmingham and Ciapponi, to recommend to the Westlands Board that it approve the reclassification transaction in lieu of increasing rates and charges that would be offset by credits. Subsequently, the Westlands Board approved the Finance and Administration Committee's recommendation.

14. Some of the reclassified assets came from “payable” accounts consisting of amounts that were collected from customers in previous periods but for which revenue was never recorded in the financial statements. The original intent of these accounts was to collect and retain funds to be used for the payment of certain expenses of Westlands and USBR. In the event the funds were not needed in the current fiscal year, they were retained by Westlands until they were needed for the stated purpose or otherwise dispensed at the direction of Westlands’ Board. Westlands decided to reclassify \$8.3 million from these accounts to revenue for 2010. Westlands had never previously reclassified funds from these accounts in a similar manner.

15. In addition, Westlands decided to record \$1.46 million of revenue in 2010 by means of a “return of equity” to landowners in the district. The “equity” came from a reserve fund originally established to ensure debt service payments in future years, related to a 1999 debt issue and had been funded through a rate component of customer charges collected between 1999 and 2002. Together, the two sets of transactions would result in \$9.8 million in additional revenue being recorded, solely to meet the debt service ratio covenant. Without the transactions, Westlands would have reported a debt service coverage ratio of .63.

16. At the public Board meeting at which the transactions were discussed, Birmingham and Ciapponi recommended that the Board approve the transactions. They told the Board that Westlands needed additional revenue to achieve a 1.25 debt ratio and the Board could either increase rates and charges or approve the transactions. When one Board member, who was also a Westlands customer, began to question whether rates and charges in an area in which he owned land would be raised as a result of having to meet the covenant, Birmingham joked that they were engaging in “a little Enron accounting.” Birmingham went on to state: “We’re not collecting any more money from the rate payers, nor are we paying any more money than we would otherwise pay under that the . . . um . . . to pay off the debt. All we’re doing is we’re taking money and saying we are reclassifying it from an account payable to income. And I’m told by Mr. Ciapponi that that satisfies – and he’s vetted it – that that satisfies our debt coverage with the bonds.”

17. The Board voted to approve the transactions, which were recorded as part of the year end closing process for fiscal year 2010. Other than customers who were present at the Board meeting, Westlands’ customers were not made aware that their “equity” had been returned to them. The benefit of these transactions to Westlands and its customers was twofold. First, Westlands avoided reporting a debt service coverage ratio of 0.63 for 2010 and any potential negative consequences associated with failing to meet its covenant under prior bond issuances. Second, Westlands was able to meet the debt service coverage ratio without raising its customers’ water rates.

#### The 2012 Prior Period Adjustment

18. Two years later, and separate from the transactions described above, Westlands changed the way it accounted for advance operations and maintenance payments made to the USBR in 2010 and 2011, classifying them as expenses instead of their original capitalization. Had these expenses been recorded in 2010, Westlands debt service coverage ratio would have been even lower unless Westlands had raised rates and land charges or lowered expenses in



2010. In 2012, when it changed the method by which it accounted for these payments, Westlands recorded a prior period adjustment for the fiscal year 2010 expenses, but in accordance with Generally Accepted Accounting Principles did not restate net revenue for that year. If the payments initially had been recorded as expenses in 2010, net revenue would have decreased and Westlands' debt service coverage ratio for 2010 would have been 0.73 rather than 1.25 (excluding the impact of the 2010 accounting transactions described above).

19. Westlands disclosed this prior period adjustment in a note to its audited financial statements for fiscal year 2012, which were appended to the Official Statement for the 2012 Bonds. However, Westlands did not correct the coverage ratios reported in the Historic Operating Results table for 2010 to account for the adjustment.

20. Westlands did not consider in 2012 whether the debt service coverage ratio reported for 2010 should have been revised as a result of the prior period adjustment. Ciapponi understood that, if the payments made to the USBR in 2010 had been treated in 2010 as an expense, the net revenue for that year would have been reduced, but he did not consider whether it would have affected the 2010 debt service ratio. Similarly, Birmingham was aware of the adjustment but he did not consider its effect on the 2010 debt service ratio.

The Official Statement for the 2012 Bonds Contained False and  
Misleading Statements Concerning the 2010 Debt Service Coverage Ratio

21. The Official Statement for the 2012 Bonds was false and misleading because it represented that Westlands' debt service coverage ratio for 2010 was 1.25 and, therefore, that Westland had complied with its covenants to fix water rates at levels reasonably expected to yield a debt service coverage ratio of 1.25. Westlands did not disclose that the ratio was met only because of the extraordinary transactions undertaken in 2010 to create additional purported revenue, nor did it disclose the effect the 2012 prior period adjustment would have had on the debt service coverage ratio for 2010. Had Westlands disclosed in the Official Statement the combined effect of both the 2010 transactions and the 2012 prior period adjustment, it would have reported its debt service coverage ratio for 2010 as 0.11—less than 10% of what was required. In addition, the failure to disclose the nature of the 2010 and 2012 transactions in the Official Statement masked the fact that Westlands had experienced a significant drop in net revenue in 2010.

22. The dramatic drop in Westlands' 2010 net revenue, its negative effect on the debt service coverage ratio for that year, and the effect of the 2012 prior period adjustment on the 2010 debt service coverage ratio, would have been material to investors in the 2012 Bonds.

Birmingham and Ciapponi Certified the Accuracy of the  
Official Statement on Behalf of Westlands

23. Both Birmingham and Ciapponi were involved in the issuance of the 2012 Bonds and the Official Statement. On behalf of Westlands, both Birmingham and Ciapponi signed the 2012 Bond Purchase Contract with the underwriter. As part of that contract, they certified to the underwriter that the Preliminary Official Statement and the Official Statement "contain no



misstatement of any material fact and do not omit any statement necessary to make the statements contained therein, in light of the circumstances in which such statements were made, not misleading.” Birmingham also made a similar representation in the Closing Certificate he signed on behalf of Westlands.

24. Birmingham received drafts of the Official Statement for the 2012 Bonds. He was aware of the extraordinary 2010 transactions Westlands used to record revenue solely to achieve a 1.25 debt service coverage ratio without raising rates or other charges, but did not take any steps to disclose their effect on the 2010 debt service coverage ratio reported in the Official Statement. Similarly, despite being aware that the 2012 prior period adjustment affected Westland’s net revenue for 2010, Birmingham did not consider whether the 2010 debt service coverage ratio reported in the Official Statement should have been revised.

25. Ciapponi reviewed each draft of the Official Statement as well as the final version. He was aware of the extraordinary 2010 transactions Westlands used to record revenue in order to meet the debt service coverage ratio, but did not take any steps to disclose their effect on the 2010 debt service coverage ratio which was reported in the Official Statement. Similarly, despite being aware that the 2012 prior period adjustment affected Westland’s net revenue for 2010, he did not consider whether the 2010 debt service coverage ratio reported in the Official Statement should have been revised.

### Legal Discussion

#### Respondents’ Violations

26. Section 17(a)(2) of the Securities Act makes it unlawful “in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.” 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2) and no finding of scienter is required. See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). The Commission has held that the “knew or should have known” standard is appropriate to establish negligence. See KPMG, LLP v. SEC, 289 F.3d 109, 120 (D.C. Cir. 2002). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

27. The Commission may institute cease-and-desist proceedings against any person held to be a cause of violations of the federal securities laws due to acts or omissions such person knew or should have known would contribute to the violation. See Valicenti Advisory Servs., Inc., Inv. Advisors Act Rel. No. 1774, 1998 SEC LEXIS 2497, at \*16, n.11 (Nov. 18, 1998), 53 S.E.C. 1033, 1040 n.11 (Nov. 18, 1998), aff’d, Valicenti Advisory Servs., Inc. v. SEC, 198 F.3d 62 (2d Cir. 1999). Negligence is sufficient to establish a violation for causing the primary violation. See KPMG Peat Marwick L.L.P., Exchange Act Rel. No. 43862, 2001 SEC LEXIS 98, at \*102 (Jan. 19, 2001), 54 S.E.C. 1135, 1185, aff’d, 289 F.3d 109 (D.C. Cir. 2002).

28. Birmingham and Ciapponi each knew, or should have known, that Westlands' revenue and debt service coverage ratio for 2010 as reported in the Official Statement for the 2012 Bonds were misrepresented as a result of the extraordinary transactions recorded in 2010. They were also negligent for failing to consider the effect of the 2012 prior period adjustment on the revenue and the debt service coverage ratio calculation that was reported in the Official Statement for the 2012 Bonds. The negligent conduct of Birmingham and Ciapponi is imputed to Westlands.

29. As a result of the conduct described herein, Westlands violated Section 17(a)(2) of the Securities Act and Birmingham and Ciapponi caused Westlands' violations.

#### **Cooperation and Remedial Efforts**

30. In determining to accept Respondents' offers, the Commission considered the Respondents' cooperation and prompt remedial actions, including the development of written financial disclosures policies, and staff training related to Westlands' debt offerings.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Within ten (10) days of the entry of this Order, Westlands shall pay a civil money penalty in the amount of \$125,000 and Birmingham shall pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Ciapponi shall pay a civil money penalty in the amount of \$20,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made by Ciapponi in the following installments: \$10,000 due ten (10) days from the date of the Order, and \$10,000 due twelve (12) months from the date of the Order. If any payment from Ciapponi is not made by the date the payment is required by this Order, the entire outstanding balance of his civil penalty, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment by the Respondents must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Westlands, Birmingham, or Ciapponi, respectively, as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S. C. §523, that the findings in the Order are true and admitted by Respondents Birmingham and Ciapponi, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Birmingham and Ciapponi under the Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents Birmingham and Ciapponi of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

A handwritten signature in black ink, appearing to read "Brent J. Fields". The signature is fluid and cursive, with the first name "Brent" being more prominent than the last name "Fields".

Brent J. Fields  
Secretary

### Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), on the Respondents and their legal agents.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

Brian P. Knight, Esq.  
San Francisco Regional Office  
Securities and Exchange Commission  
44 Montgomery St, Suite 2800  
San Francisco, CA 94104

Westlands Water District  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625

Mr. Thomas W. Birmingham  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625

Mr. Louie David Ciapponi  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625

Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625  
(Counsel for Westlands Water District, Thomas W. Birmingham, and Louie David  
Ciapponi)

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

1090  
OFFICIAL BUSINESS



7013 2630 0002 2620 2006

Mr. Thomas W. Birmingham  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625



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**BETTY T. YEE**  
**California State Controller**

June 8, 2018

District Fiscal Officer  
Westlands Water District  
3130 N. Fresno Street  
P.O. Box 6056  
Fresno, CA 93703-6056

**SUBJECT: Special Districts Financial Transactions Report for Fiscal Year 2017-18**

Dear District Fiscal Officer:

This letter is to inform you that the State Controller's Office (SCO) is revising the 2017-18 Financial Transactions Report (FTR) forms to incorporate minor changes. The SCO will mail the alert packages for the 2017-18 FTR in October 2018, and the report will be due January 31, 2019. Please note that the due dates, per Government Code section 53891, have not changed, and in future years, you will be required to submit your FTR within seven months after the close of your fiscal year.

If you have any questions regarding the changes, please contact the Special Districts Reporting Unit by telephone at (916) 327-1017 or by email at [SDsupport@sco.ca.gov](mailto:SDsupport@sco.ca.gov).

Sincerely,

A handwritten signature in dark ink, appearing to read "Edward Serafica", is located below the word "Sincerely,".

EDWARD SERAFICA, Supervisor  
Local Government Reporting Section





**BETTY T. YEE**  
**California State Controller**

June 8, 2018

District Fiscal Officer  
Broadview Water District  
P.O. Box 6056  
Fresno, CA 93703-6056

**SUBJECT: Special Districts Financial Transactions Report for Fiscal Year 2017-18**

Dear District Fiscal Officer:

This letter is to inform you that the State Controller's Office (SCO) is revising the 2017-18 Financial Transactions Report (FTR) forms to incorporate minor changes. The SCO will mail the alert packages for the 2017-18 FTR in October 2018, and the report will be due January 31, 2019. Please note that the due dates, per Government Code section 53891, have not changed, and in future years, you will be required to submit your FTR within seven months after the close of your fiscal year.

If you have any questions regarding the changes, please contact the Special Districts Reporting Unit by telephone at (916) 327-1017 or by email at [SDsupport@sco.ca.gov](mailto:SDsupport@sco.ca.gov).

Sincerely,

A handwritten signature in dark ink, appearing to read "Edward Serafica", is written over a light blue horizontal line.

EDWARD SERAFICA, Supervisor  
Local Government Reporting Section



RECEIVED

OCT 24 2016

**BETTY T. YEE**  
California State Controller

October 17, 2016

Thomas W. Birmingham, General Manager  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 93703

Dear Mr. Birmingham:

This letter is to confirm, as discussed by telephone on October 14, 2016, between Bobbie Ormonde of your staff and Michael Cheng of our staff, that the State Controller's Office (SCO) will conduct a review of the Westlands Water District's state and federal funding relating to various grants and loans. Our review will include an analysis of the administrative and internal accounting controls and fiscal management of the district. Our review will focus on the period of March 1, 2013, through February 28, 2015; however, if issues come to our attention, we may expand our work to include prior and/or current periods.

The review will be conducted under Government Code section 12410, which requires the Controller to "...superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment."

Additionally, Government Code section 12891.2 grants the Controller the authority to audit the books and records of public agencies receiving loans or grants for local water projects.

To expedite the completion of the review, please have available working papers and/or reports summarizing revenues, expenditures, and account balances. Attached is a Document and Information Request that lists the documents we will need for our review. We request that these documents be available at the start of the fieldwork. We may request additional information and documentation throughout the course of the review.

An entrance conference has been scheduled for October 24, 2016, at 1:00 p.m. at 3130 N. Fresno Street, Fresno, California. We will begin fieldwork after the entrance conference. We will appreciate it if workspace and the appropriate contact personnel are made available to the staff at that time. We anticipate completing the fieldwork in approximately six to eight weeks.

Thomas W. Birmingham, General Manager  
October 17, 2016  
Page 2

If you have any questions or require additional information, please contact Christopher Lek, Interim Chief, Local Government Audits Bureau, by telephone at (916) 284-0120 or by email at [clek@sco.ca.gov](mailto:clek@sco.ca.gov).

Sincerely,



JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/am

17542

Attachment

cc: Don Peracchi, Board President  
Westlands Water District  
Bobbie Ormonde, Director of Finance and Administration  
Westlands Water District  
George Lolas, Chief Operating Officer  
State Controller's Office  
Christopher Lek, Interim Bureau Chief  
State Controller's Office  
Hitomi Sekine, Bureau Chief  
State Controller's Office  
Efren Loste, Audit Manager  
State Controller's Office  
Michael Cheng, Auditor-in-Charge  
State Controller's Office

## ATTACHMENT

### DOCUMENT AND INFORMATION REQUEST

- Schedule of state and federal funding received/spent during the review period
- Contract agreements for the above funding
- District's accounting/administrative policies and procedures
- General ledger, journals, and chart of accounts
- Summary schedules of revenues, expenditures, and account balances
- Independent audit and other audit reports
- Organization chart
- Other pertinent documents relating to the review

**To:** Bobbie Ormonde[bormonde@westlandswater.org]  
**From:** Ruano, Martin  
**Sent:** Wed 3/9/2016 5:52:39 PM  
**Subject:** FW: Westlands releases  
[Order 33-10053.pdf](#)

Bobbie,

Attached is the Order from the SEC. Based on this order, the escrow agent should release the funds to the SEC.

Let me know if you have questions.

Martin

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**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 10053 / March 9, 2016**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3752 / March 9, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17162**

**In the Matter of**

**WESTLANDS WATER  
DISTRICT, THOMAS W.  
BIRMINGHAM, and  
LOUIE DAVID CIAPPONI**

**Respondents.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933, MAKING FINDINGS, AND  
IMPOSING A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), against Westlands Water District (“Westlands”), Thomas W. Birmingham, and Louie David Ciapponi (collectively “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents' Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. This matter involves misrepresentations and omissions by Westlands in the Official Statement for its October 2012 offering of \$77 million in Refunding Revenue Bonds, Series 2012A (the "2012 Bonds"). The Official Statement for the 2012 Bonds was misleading in its treatment of one key metric for Fiscal Year 2010: Westlands' debt service coverage ratio. The debt service coverage ratio is important to investors because it signals whether an issuer has sufficient ability to meet its debt service obligations. In prior bond offerings, Westlands had covenanted to fix and collect water rates at least sufficient to generate net revenues equal to at least 125% of its debt service payments for that year. Failure by Westlands to meet that 1.25 debt service coverage ratio could be a technical default on its bonds which could lead to undesirable outcomes, including higher interest rates on future bonds, ratings downgrades, and an inability to sell bonds in the following fiscal year.

2. The Official Statement for the 2012 Bonds contained a table representing that Westlands had met or exceeded the required debt service coverage ratio for each of the prior five years.<sup>2</sup> For fiscal year 2010, however, the revenue and coverage ratio reported in the table were misleading because Westlands failed to disclose: (1) that it had engaged in extraordinary accounting transactions in 2010 *solely* to recognize additional revenue for purposes of calculating the debt service coverage ratio without raising rates on customers, and (2) the impact of a 2012 prior period adjustment to account for expenses that would have decreased revenue in 2010 and negatively affected the ratio.

3. In the latter half of fiscal year 2010, Westlands staff informed Birmingham and Ciapponi that, because of reductions in water supply, Westlands would not generate sufficient revenue to achieve a 1.25 debt service coverage ratio. At Ciapponi's direction, Westlands staff consulted with its independent auditor about accounting transactions that could be implemented to avoid raising water rates in order to meet a 1.25 debt service coverage ratio. Subsequently, Westlands staff, including Birmingham and Ciapponi, advised Westlands' Finance and Administration Committee that it recommend to Westlands' Board of Directors (the "Board") to approve two accounting transactions to recognize additional revenue. These transactions and their effect on revenue and the debt service coverage ratio were not disclosed in the Official Statement for the 2012 Bonds. Separately, in 2012, Westlands adjusted the accounting for certain expenses. Had these expenses been recorded in 2010, the 2010 debt service coverage ratio would have been negatively affected. While this prior period adjustment was disclosed in the Official Statement for the 2012 Bonds, its impact on the 2010 debt service coverage ratio was not disclosed. If the effect of the 2010 and 2012 accounting transactions on the debt service

---

<sup>1</sup> The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> Westland's fiscal year ends on February 28. Unless otherwise specified in this Order, references to specific years are to fiscal years.

coverage ratio had been disclosed, Westlands' coverage ratio for 2010 would have been 0.11, rather than the 1.25 which was reported in the Official Statement.

4. As a result of the conduct described herein, Westlands violated Section 17(a)(2) of the Securities Act and Birmingham and Ciapponi caused Westlands' violation.

### **Respondents**

5. **Westlands Water District** is headquartered in Fresno, California and is the largest agricultural water district in California. Westlands is a public agency of the State of California, originally formed in 1952 for the primary purpose of providing irrigation water to customers within the district. Its customers are approximately 700 agricultural land owners and water users and approximately 200 municipal and industrial land owners and water users. Westlands' Board is elected by land owners in the district, and as a result, Westlands is managed by representatives of its customers. For 2014, Westlands had operating revenues in excess of \$120 million.

6. **Thomas W. Birmingham**, age 60, of Sacramento, California, has served as the General Manager of Westlands, the highest executive level position, from October 2000 through the present. He is a member of the State Bar of California and also served as Westlands' General Counsel through May 2010 and was reappointed General Counsel in September 2015.

7. **Louie David Ciapponi** age 64, of Fresno, California, was the Assistant General Manager of Westlands from June 1995 to June 2012. Since June 2012 Ciapponi has been employed as the General Manager of a neighboring water district that had previously been annexed by Westlands. While employed at the other water district, Ciapponi continued to perform many of the same functions for Westlands that he had previously performed. He is also presently serving as Westlands' Secretary, a position he has held since 1995, and was Westlands' Treasurer from 1995 to December 16, 2015.

### **Facts**

#### **Westlands' Rate Covenant**

8. In most years, Westlands purchases the majority of the water it sells to its customers from the United States Bureau of Reclamation ("USBR") and is required to pay a share of USBR's capital costs and operations and maintenance expenses. In drought years such as 2010, the USBR often reduces the quantity of water it makes available to Westlands, forcing Westlands to purchase water from other, more expensive, sources. Westlands charges its customers for the cost of water it sells and collects additional fees both for its own operational expenses and the share of the USBR expenses it pays.

9. In prior debt offerings, Westlands had covenanted, to the fullest extent permitted by law, to fix and prescribe, and collect customers' water rates and charges at least sufficient during each fiscal year to yield net revenues equal to 125% of the debt service payable in that fiscal year. The purpose of this covenant is to assure investors and others, including ratings agencies, that Westlands will have sufficient ability to meet its debt service obligations on the



bonds. Westlands has significant incentive to maintain the 1.25 ratio because a failure to do so could preclude Westlands from issuing bonds in the following fiscal year. Failure to maintain the ratio could also result in higher borrowing costs in future debt offerings and could negatively affect Westlands' debt ratings.

10. The Official Statement for the 2012 Bonds included a table reporting the debt service coverage ratio for fiscal years 2008 through 2012. The table contains, among other operating data, columns showing five years of summary income statement information and the ratio for each year, derived from Westlands' audited financial statements, which reflects that Westlands maintained a debt service ratio of exactly 1.25 for 2010. The bond sale transaction closed on October 25, 2012.

Extraordinary Accounting Transactions in Fiscal Year 2010 to  
Increase the Debt Service Coverage Ratio

11. In October 2009, Ciapponi learned that the projected full year revenue for fiscal year 2010 would be approximately \$10 million short of what was required to maintain the 1.25 debt service coverage ratio. Westlands' fiscal year ends February 28, so it had very little time to rectify the revenue shortfall for fiscal year 2010 in order to maintain the 1.25 ratio for that year.

12. In order to meet the ratio, Westlands could have collected additional revenue by raising the water rates or other charges on its customers. This would have meant increasing water rates and land charges by about 11.6%. Westlands decided not to do so because management, including Birmingham and Ciapponi, wanted to minimize the costs on Westlands' customers. Instead, Westlands decided to reclassify certain assets as revenue. Ciapponi instructed Westlands staff to meet with Westlands' independent auditor to discuss this potential alternative to raising water rates. A memo prepared by Westlands employees and sent to Westlands' auditor in November 2009 described the proposal to "reclassify cash reserves or retained earnings" to record additional revenue "in lieu of collecting current revenue while maintaining the required debt coverage ratio." Westlands staff met with the auditor in January 2010. The auditor informed the Westlands staff that he believed the suggested transactions were permissible and subsequently issued an unqualified opinion on Westlands' 2010 audited financial statements. The auditor was not asked whether, or how, disclosure of the transactions should be made in the Official Statement. These reclassification transactions would not increase cash collections and were merely accounting transactions done for the sole purpose of maintaining the ratio.

13. Westlands staff, through Birmingham, as General Manager/General Counsel, and Ciapponi, as Assistant General Manager, presented a memorandum to Westlands' Finance and Administration Committee describing the various accounting transactions that were proposed to achieve a 1.25 debt service coverage ratio. The Finance and Administration Committee decided, based on the recommendation of staff, including Birmingham and Ciapponi, to recommend to the Westlands Board that it approve the reclassification transaction in lieu of increasing rates and charges that would be offset by credits. Subsequently, the Westlands Board approved the Finance and Administration Committee's recommendation.

14. Some of the reclassified assets came from “payable” accounts consisting of amounts that were collected from customers in previous periods but for which revenue was never recorded in the financial statements. The original intent of these accounts was to collect and retain funds to be used for the payment of certain expenses of Westlands and USBR. In the event the funds were not needed in the current fiscal year, they were retained by Westlands until they were needed for the stated purpose or otherwise dispensed at the direction of Westlands’ Board. Westlands decided to reclassify \$8.3 million from these accounts to revenue for 2010. Westlands had never previously reclassified funds from these accounts in a similar manner.

15. In addition, Westlands decided to record \$1.46 million of revenue in 2010 by means of a “return of equity” to landowners in the district. The “equity” came from a reserve fund originally established to ensure debt service payments in future years, related to a 1999 debt issue and had been funded through a rate component of customer charges collected between 1999 and 2002. Together, the two sets of transactions would result in \$9.8 million in additional revenue being recorded, solely to meet the debt service ratio covenant. Without the transactions, Westlands would have reported a debt service coverage ratio of .63.

16. At the public Board meeting at which the transactions were discussed, Birmingham and Ciapponi recommended that the Board approve the transactions. They told the Board that Westlands needed additional revenue to achieve a 1.25 debt ratio and the Board could either increase rates and charges or approve the transactions. When one Board member, who was also a Westlands customer, began to question whether rates and charges in an area in which he owned land would be raised as a result of having to meet the covenant, Birmingham joked that they were engaging in “a little Enron accounting.” Birmingham went on to state: “We’re not collecting any more money from the rate payers, nor are we paying any more money than we would otherwise pay under that the . . . um . . . to pay off the debt. All we’re doing is we’re taking money and saying we are reclassifying it from an account payable to income. And I’m told by Mr. Ciapponi that that satisfies – and he’s vetted it – that that satisfies our debt coverage with the bonds.”

17. The Board voted to approve the transactions, which were recorded as part of the year end closing process for fiscal year 2010. Other than customers who were present at the Board meeting, Westlands’ customers were not made aware that their “equity” had been returned to them. The benefit of these transactions to Westlands and its customers was twofold. First, Westlands avoided reporting a debt service coverage ratio of 0.63 for 2010 and any potential negative consequences associated with failing to meet its covenant under prior bond issuances. Second, Westlands was able to meet the debt service coverage ratio without raising its customers’ water rates.

#### The 2012 Prior Period Adjustment

18. Two years later, and separate from the transactions described above, Westlands changed the way it accounted for advance operations and maintenance payments made to the USBR in 2010 and 2011, classifying them as expenses instead of their original capitalization. Had these expenses been recorded in 2010, Westlands debt service coverage ratio would have been even lower unless Westlands had raised rates and land charges or lowered expenses in

2010. In 2012, when it changed the method by which it accounted for these payments, Westlands recorded a prior period adjustment for the fiscal year 2010 expenses, but in accordance with Generally Accepted Accounting Principles did not restate net revenue for that year. If the payments initially had been recorded as expenses in 2010, net revenue would have decreased and Westlands' debt service coverage ratio for 2010 would have been 0.73 rather than 1.25 (excluding the impact of the 2010 accounting transactions described above).

19. Westlands disclosed this prior period adjustment in a note to its audited financial statements for fiscal year 2012, which were appended to the Official Statement for the 2012 Bonds. However, Westlands did not correct the coverage ratios reported in the Historic Operating Results table for 2010 to account for the adjustment.

20. Westlands did not consider in 2012 whether the debt service coverage ratio reported for 2010 should have been revised as a result of the prior period adjustment. Ciapponi understood that, if the payments made to the USBR in 2010 had been treated in 2010 as an expense, the net revenue for that year would have been reduced, but he did not consider whether it would have affected the 2010 debt service ratio. Similarly, Birmingham was aware of the adjustment but he did not consider its effect on the 2010 debt service ratio.

The Official Statement for the 2012 Bonds Contained False and Misleading Statements Concerning the 2010 Debt Service Coverage Ratio

21. The Official Statement for the 2012 Bonds was false and misleading because it represented that Westlands' debt service coverage ratio for 2010 was 1.25 and, therefore, that Westland had complied with its covenants to fix water rates at levels reasonably expected to yield a debt service coverage ratio of 1.25. Westlands did not disclose that the ratio was met only because of the extraordinary transactions undertaken in 2010 to create additional purported revenue, nor did it disclose the effect the 2012 prior period adjustment would have had on the debt service coverage ratio for 2010. Had Westlands disclosed in the Official Statement the combined effect of both the 2010 transactions and the 2012 prior period adjustment, it would have reported its debt service coverage ratio for 2010 as 0.11— less than 10% of what was required. In addition, the failure to disclose the nature of the 2010 and 2012 transactions in the Official Statement masked the fact that Westlands had experienced a significant drop in net revenue in 2010.

22. The dramatic drop in Westlands' 2010 net revenue, its negative effect on the debt service coverage ratio for that year, and the effect of the 2012 prior period adjustment on the 2010 debt service coverage ratio, would have been material to investors in the 2012 Bonds.

Birmingham and Ciapponi Certified the Accuracy of the Official Statement on Behalf of Westlands

23. Both Birmingham and Ciapponi were involved in the issuance of the 2012 Bonds and the Official Statement. On behalf of Westlands, both Birmingham and Ciapponi signed the 2012 Bond Purchase Contract with the underwriter. As part of that contract, they certified to the underwriter that the Preliminary Official Statement and the Official Statement "contain no

misstatement of any material fact and do not omit any statement necessary to make the statements contained therein, in light of the circumstances in which such statements were made, not misleading.” Birmingham also made a similar representation in the Closing Certificate he signed on behalf of Westlands.

24. Birmingham received drafts of the Official Statement for the 2012 Bonds. He was aware of the extraordinary 2010 transactions Westlands used to record revenue solely to achieve a 1.25 debt service coverage ratio without raising rates or other charges, but did not take any steps to disclose their effect on the 2010 debt service coverage ratio reported in the Official Statement. Similarly, despite being aware that the 2012 prior period adjustment affected Westland’s net revenue for 2010, Birmingham did not consider whether the 2010 debt service coverage ratio reported in the Official Statement should have been revised.

25. Ciapponi reviewed each draft of the Official Statement as well as the final version. He was aware of the extraordinary 2010 transactions Westlands used to record revenue in order to meet the debt service coverage ratio, but did not take any steps to disclose their effect on the 2010 debt service coverage ratio which was reported in the Official Statement. Similarly, despite being aware that the 2012 prior period adjustment affected Westland’s net revenue for 2010, he did not consider whether the 2010 debt service coverage ratio reported in the Official Statement should have been revised.

## **Legal Discussion**

### **Respondents’ Violations**

26. Section 17(a)(2) of the Securities Act makes it unlawful “in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.” 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2) and no finding of scienter is required. See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). The Commission has held that the “knew or should have known” standard is appropriate to establish negligence. See KPMG, LLP v. SEC, 289 F.3d 109, 120 (D.C. Cir. 2002). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

27. The Commission may institute cease-and-desist proceedings against any person held to be a cause of violations of the federal securities laws due to acts or omissions such person knew or should have known would contribute to the violation. See Valicenti Advisory Servs., Inc., Inv. Advisors Act Rel. No. 1774, 1998 SEC LEXIS 2497, at \*16, n.11 (Nov. 18, 1998), 53 S.E.C. 1033, 1040 n.11 (Nov. 18, 1998), aff’d, Valicenti Advisory Servs., Inc. v. SEC, 198 F.3d 62 (2d Cir. 1999). Negligence is sufficient to establish a violation for causing the primary violation. See KPMG Peat Marwick L.L.P., Exchange Act Rel. No. 43862, 2001 SEC LEXIS 98, at \*102 (Jan. 19, 2001), 54 S.E.C. 1135, 1185, aff’d, 289 F.3d 109 (D.C. Cir. 2002).

28. Birmingham and Ciapponi each knew, or should have known, that Westlands' revenue and debt service coverage ratio for 2010 as reported in the Official Statement for the 2012 Bonds were misrepresented as a result of the extraordinary transactions recorded in 2010. They were also negligent for failing to consider the effect of the 2012 prior period adjustment on the revenue and the debt service coverage ratio calculation that was reported in the Official Statement for the 2012 Bonds. The negligent conduct of Birmingham and Ciapponi is imputed to Westlands.

29. As a result of the conduct described herein, Westlands violated Section 17(a)(2) of the Securities Act and Birmingham and Ciapponi caused Westlands' violations.

### **Cooperation and Remedial Efforts**

30. In determining to accept Respondents' offers, the Commission considered the Respondents' cooperation and prompt remedial actions, including the development of written financial disclosures policies, and staff training related to Westlands' debt offerings.

## **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Within ten (10) days of the entry of this Order, Westlands shall pay a civil money penalty in the amount of \$125,000 and Birmingham shall pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Ciapponi shall pay a civil money penalty in the amount of \$20,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made by Ciapponi in the following installments: \$10,000 due ten (10) days from the date of the Order, and \$10,000 due twelve (12) months from the date of the Order. If any payment from Ciapponi is not made by the date the payment is required by this Order, the entire outstanding balance of his civil penalty, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment by the Respondents must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Westlands, Birmingham, or Ciapponi, respectively, as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

**V.**

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S. C. §523, that the findings in the Order are true and admitted by Respondents Birmingham and Ciapponi, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Birmingham and Ciapponi under the Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents Birmingham and Ciapponi of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields  
Secretary

## **Press Release**

### California Water District to Pay Penalty for Misleading Investors

#### **FOR IMMEDIATE RELEASE**

**2016-43**

*Washington D.C., March 9, 2016* — The Securities and Exchange Commission today charged California's largest agricultural water district with misleading investors about its financial condition as it issued a \$77 million bond offering.

In addition to charging Westlands Water District, the SEC charged its general manager Thomas Birmingham and former assistant general manager Louie David Ciapponi.

According to the SEC's order instituting a settled administrative proceeding:

- Westlands agreed in prior bond offerings to maintain a 1.25 debt service coverage ratio, which is a measure of an issuer's ability to make future bond payments.
- Westlands learned in 2010 that drought conditions and reduced water supply would prevent the water district from generating enough revenue to maintain a 1.25 ratio.
- In order to meet the 1.25 ratio without raising rates on water customers, Westlands used extraordinary accounting transactions that reclassified funds from reserve accounts to record additional revenue.
- Birmingham jokingly referred to these transactions as "a little Enron accounting" when describing them to the board of directors, which is comprised of Westlands customers.
- When Westlands issued the \$77 million bond offering in 2012, it represented to investors that it met or exceeded the 1.25 ratio for each of the prior five years.
- Not only did Westlands fail to disclose that wouldn't have been possible without the extraordinary 2010 accounting transactions, but also omitted separate accounting adjustments made in 2012 that would have negatively affected the ratio had they been done in 2010.
- Had the 2010 reclassifications and the effect of the 2012 adjustments been disclosed, Westlands' coverage ratio for 2010 would have been only 0.11 instead of the 1.25 reported to investors.
- Birmingham and Ciapponi improperly certified the accuracy of the bond offering documents.

Westlands agreed to pay \$125,000 to settle the charges, making it only the second municipal issuer to pay a financial penalty in an SEC enforcement action. Birmingham and Ciapponi agreed to pay penalties of \$50,000 and \$20,000 respectively to settle the charges against them.



“The undisclosed accounting transactions, which a manager referred to as ‘a little Enron accounting,’ benefited customers but left investors in the dark about Westlands Water District’s true financial condition,” said Andrew J. Ceresney, Director of the SEC Enforcement Division. “Issuers must be truthful with investors and we will seek to deter such misconduct through sanctions, including penalties against municipal issuers in appropriate circumstances.”

The SEC’s order finds that Westlands, Birmingham and Ciapponi violated Section 17(a)(2) of the Securities Act of 1933 and must cease and desist from future violations. They neither admitted nor denied the findings.

The SEC’s investigation was conducted by Brian P. Knight, Creighton L. Papier, Monique C. Winkler, and Deputy Chief Mark R. Zehner in the Municipal Securities and Public Pensions Unit with assistance from John Yun in the San Francisco office.

###

## **Related Materials**

- [SEC order](#)



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

SAN FRANCISCO REGIONAL OFFICE  
44 MONTGOMERY STREET, SUITE 2800  
SAN FRANCISCO, CALIFORNIA 94104-4802

DIVISION OF ENFORCEMENT

BRIAN P. KNIGHT  
Municipal Securities &  
Public Pensions Unit  
Telephone: 415-705-2364  
Facsimile: 415-705-2501  
knightb@sec.gov

October 10, 2013

Via UPS

Westlands Water District  
c/o Thomas W. Birmingham, General Manager  
3130 N. Fresno Street  
Fresno, CA 93703

Re: **In the Matter of Westlands Water District (SF-03899)**

Dear Mr. Birmingham:

The staff of the Securities and Exchange Commission is conducting an investigation in the matter identified above. The enclosed subpoena has been issued to you as part of this investigation. The subpoena requires you to provide documents by **Monday, October 28, 2013**.

Please read the subpoena and this letter carefully. This letter answers some questions you may have about the subpoena. You should also read the enclosed SEC Form 1662. You must comply with the subpoena. You may be subject to a fine and/or imprisonment if you do not.

**Producing Documents**

*What materials do I have to produce?*

The subpoena requires you to give us the documents described in the attachment to the subpoena. You must provide these documents by October 28, 2013. The attachment to the subpoena defines some terms (such as "document") before listing what you must provide.

Please note that if copies of a document differ in any way, they are considered separate documents and you must send each one. For example, if you have two copies of the same letter, but only one of them has handwritten notes on it, you must send both the clean copy and the one with notes.

If you prefer, you may send us photocopies of the originals. The Commission cannot reimburse you for the copying costs. The copies must be identical to the originals, including even faint marks or print. If you choose to send copies, you must keep the originals in a safe place. The staff will accept the copies for now, but may require you to produce the originals later.

If you do send us photocopies, please put an identifying notation on each page of each document to indicate that it was produced by you, and number the pages of all the documents submitted. (For example, if Jane Doe sends documents to the staff, she may number the pages JD-1, JD-2, JD-3, etc., in a blank corner of the documents.) Please make sure the notation and number do not conceal any writing or marking on the document. If you send us originals, please do not add any identifying notations.

*Do I need to send anything else?*

You should enclose a list briefly describing each item you send. The list should state which paragraph(s) in the subpoena attachment each item responds to. A copy of the subpoena should be included with the documents that are produced.

Passwords for documents, files, compressed archives, and encrypted media should be provided separately either via email addressed to ENF-CPU@sec.gov, or in a separate cover letter mailed separately from the data.

Please include a cover letter stating whether you believe you have met your obligations under the subpoena by searching carefully and thoroughly for everything called for by the subpoena, and sending it all to us.

*What if I do not send everything described in the attachment to the subpoena?*

The subpoena requires you to send all the materials described in it. If, for any reason -- including a claim of attorney-client privilege -- you do not produce something called for by the subpoena, you should submit a list of what you are not producing. The list should describe each item separately, noting:

- its author(s);
- its date;
- its subject matter;
- the name of the person who has the item now, or the last person known to have it;
- the names of everyone who ever had the item or a copy of it, and the names of everyone who was told the item's contents; and
- the reason you did not produce the item.

If you withhold anything on the basis of a claim of attorney-client privilege or attorney work product protection, you should also identify the attorney and client involved.

*Where should I send the materials?*

Please send the materials to:

ENF-CPU  
U.S. Securities and Exchange Commission  
100 F St., N.E., Mailstop 5973  
Washington, DC 20549-5973

For smaller electronic productions under 10MB in size, the materials may be emailed to the following email address: ENF-CPU@sec.gov.

**Other Important Information**

*May I have a lawyer help me respond to the subpoena?*

Yes. You have the right to consult with and be represented by your own lawyer in this matter. Your lawyer may also advise and accompany you when you testify. We cannot give you legal advice.

*What will the Commission do with the materials I send and the testimony I provide?*

The enclosed SEC Form 1662 includes a List of Routine Uses of information provided to the Commission. This form has other important information for you. Please read it carefully.

*Has the Commission determined that anyone has done anything wrong?*

This investigation is a non-public, fact-finding inquiry. We are trying to determine whether there have been any violations of the federal securities laws. The investigation and the subpoena do not mean that we have concluded that you or anyone else has broken the law. Also, the investigation does not mean that we have a negative opinion of any person, entity or security.

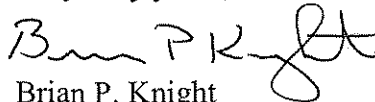
*Important Policy Concerning Settlements*

Please note that, in any matter in which enforcement action is ultimately deemed to be warranted, the Division of Enforcement will not recommend any settlement to the Commission unless the party wishing to settle certifies, under penalty of perjury, that all documents responsive to Commission subpoenas and formal and informal document requests in this matter have been produced.

*I have read this letter, the subpoena, and the SEC Form 1662, but I still have questions. What should I do?*

If you have any other questions, you may call me at (415) 705-2364. If you are represented by a lawyer, you should have your lawyer contact me.

Very truly yours,



Brian P. Knight  
Attorney, Division of Enforcement

Enclosures: Subpoena with Attachment  
SEC Data Delivery Standards  
SEC Form 1662  
Business Records Certification



**SUBPOENA**  
**UNITED STATES OF AMERICA**  
**SECURITIES AND EXCHANGE COMMISSION**

**In the Matter of Westlands Water District (SF-03899)**

To: Westlands Water District  
c/o Thomas W. Birmingham, General Manager  
3130 N. Fresno Street  
Fresno, CA 93703

☒ **YOU MUST PRODUCE** everything specified in the Attachment to this subpoena to officers of the Securities and Exchange Commission, at the place and by the date and time specified below:

**Place:** ENF-CPU  
U.S. Securities and Exchange Commission  
100 F St., N.E., Mailstop 5973  
Washington, DC 20549-5973

**Date/Time:** October 28, 2013, at 10:00 a.m.

---

☐ **YOU MUST TESTIFY** before officers of the Securities and Exchange Commission, at the place, date and time specified below:

**Place:**

**Date/Time:**

---

**FEDERAL LAW REQUIRES YOU TO COMPLY WITH THIS SUBPOENA.**

Failure to comply may subject you to a fine and/or imprisonment.

By: Brian P. Knight  
Brian P. Knight  
Securities and Exchange Commission  
44 Montgomery Street, Suite 2800  
San Francisco, CA 94104  
(415) 705-2475

Date: October 10, 2013

I am an officer of the Securities and Exchange Commission authorized to issue subpoenas in this matter. The Securities and Exchange Commission has issued a Formal Order authorizing this investigation under Section 21(a) of the Securities Exchange Act of 1934.

**Attachment to Subpoena to Westlands Water District  
In the Matter of Westlands Water District  
(SF-03899)  
October 10, 2013**

**I. Definitions**

1. The term "District" means the Westlands Water District and all of its divisions, affiliates, predecessors, successors, officers, directors, employees, agents, partners, and independent contractors, as well as aliases, code names, trade names, or business names used by, or formerly used by, any of the foregoing.
2. The term "SSP" refers to Sampson, Sampson & Patterson, LLP and all of its divisions, affiliates, predecessors, successors, officers, directors, employees, agents, partners, and independent contractors, as well as aliases, code names, trade names, or business names used by, or formerly used by, any of the foregoing.
3. The terms "document" and "documents" mean all materials in the possession, custody or control of SSP, whether drafts, unfinished, or annotated versions, originals or nonconforming copies thereof, however created, produced, or stored (manually, mechanically, electronically or otherwise), and by whomever prepared, produced, sent, dated, received, or used, including without limitation: books, charts, papers, files, lists, notes, minutes, summaries, records, analyses, correspondence, memoranda, work papers, financial information, budgets, invoices, spreadsheets, ledger sheets, confirmations, invoices, account statements, reports, wires, telegrams, telexes, telephone logs, message slips, schedules, transcriptions, notes or records of conversations or meetings, contracts, agreements, calendars, diaries, date books, bills, records of payment, magnetic tapes, tape recordings, disks, diskettes, disk packs and other electronic media, microfilm, microfiche, electronic mail, electronic data compilations, all other storage devices, and all of the foregoing reflecting communications.
4. Reference to a person shall also include that person's trusts, affiliates, employees, agents, partners, and independent contractors, as well as aliases, code names, trade names, or business names used by, or formerly used by, any of the foregoing.
5. Reference to an entity shall also include that entity's parents, subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, partners, and independent contractors, as well as aliases, code names, trade names, or business names used by, or formerly used by, any of the foregoing.
6. The terms "communication" and "communications" include any transmittal or receipt of information, whether by chance or prearranged, formal or informal, oral, written or electronic, and includes without limitation: conversations, meetings and discussions in person; conversations, meetings and discussions by telephone; and written correspondence through the use of the mails, courier services, electronic media (such as electronic mail), and telephone lines and wires.
7. The term "Bonds" means the Refunding Revenue Bonds, Series 2012A issued by the District in October 2012.
8. The disjunctive ("or") shall be deemed to include the conjunctive ("and"), and the conjunctive ("and") shall be deemed to include the disjunctive ("or"); and each of the

functional words “each,” “every,” “any” and “all” shall be deemed to include each of the other functional words.

9. Documents that “refer” or “relate” to any given subject mean any communication or document that constitutes, contains, embodies, evidences, reflects, identifies, states, deals with, bears upon, or is in any way pertinent to that subject, including documents concerning the preparation of other documents.

## **II. Instructions**

1. Unless otherwise specified, the subpoena calls for production of the original Documents and all copies and drafts of same. Documents responsive to this subpoena may be in electronic or paper form. Electronic Documents such as email should be produced in accordance with the attached Document entitled SEC Data Delivery Standards. All electronic Documents responsive to the Document subpoena, including all metadata, should also be produced in their native software format.
2. For Documents in paper format, you may send the originals, or, if you prefer, you may send copies of the originals. The Commission cannot reimburse you for the copying costs. If you are sending copies, the staff requests that you scan (rather than photocopy) hard copy Documents and produce them in an electronic format consistent with the SEC Data Delivery Standards. Alternatively, you may send us photocopies of the Documents in paper format. If you choose to send copies, you must secure and retain the originals and store them in a safe place. The staff may later request or require that you produce the originals.
3. Whether you scan or photocopy Documents, the copies must be identical to the originals, including even faint marks or print. Also, please note that if copies of a Document differ in any way, they are considered separate Documents and you must send each one. For example, if you have two copies of the same letter, but only one of them has handwritten notes on it, you must send both the clean copy and the one with notes.
4. In producing a photocopy of an original Document that contains post-it(s), notation flag(s), or other removable markings or attachments which may conceal all or a portion of the markings contained in the original Document, photocopies of the original Document both with and without the relevant post-it(s), notation flag(s), or removable markings or attachments should be produced.
5. Documents should be produced as they are kept in the ordinary course of business or be organized and labeled to correspond with the categories in this request. In that regard, Documents should be produced in a unitized manner, i.e., delineated with staples or paper clips to identify the Document boundaries.
6. Documents should be labeled with sequential numbering (bates-stamped).
7. You must produce all Documents created during, or concerning, the period January 1, 2009, to the present, unless otherwise specified.
8. The scope of any given request should not be limited or narrowed based on the fact that it calls for Documents that are responsive to another request.
9. You are not required to produce exact duplicates of any Documents that have been previously produced to the Securities and Exchange Commission staff in connection with

this matter. If you are not producing Documents based upon a prior production, please identify the responsive Documents that were previously produced.

10. For any Documents that qualify as records of regularly conducted activities under Federal Rule of Evidence 902(11), please complete a business records certification (a sample of which is enclosed) and return it with the Document production.
11. This subpoena covers all Documents in or subject to your possession, custody or control, including all Documents that are not in your immediate possession but that you have the effective ability to obtain, that are responsive, in whole or in part, to any of the individual requests set forth below. If, for any reason – including a claim of attorney-client privilege – you do not produce something called for by the request, you should submit a list of what it is not producing. The list should describe each item separately, noting:
  - a. its author(s);
  - b. its date;
  - c. its subject matter;
  - d. the name of the Person who has the item now, or the last Person known to have it;
  - e. the names of everyone who ever had the item or a copy of it, and the names of everyone who was told the item's contents;
  - f. the basis upon which you are not producing the responsive Document;
  - g. the specific request in the subpoena to which the Document relates;
  - h. the attorney(s) and the client(s) involved; and
  - i. in the case of the work product doctrine, the litigation for which the Document was prepared in anticipation.
12. If Documents responsive to this subpoena no longer exist because they have been lost, discarded, or otherwise destroyed, you should identify such Documents and give the date on which they were lost, discarded or destroyed.

### **III. Documents to Be Produced**

Please produce all of the following Documents within the District's possession or custody or subject to the District's control:

1. A complete set of minutes, agendas, recordings, notices, notes, and memoranda relating to all meetings of the District Board, the Finance and Administration Committee, and the Legal Affairs Committee, from January 1, 2009, to present.
2. Any and all documents from January 1, 2009, to present that concern the "return of equity to landowners" transaction noted in the District's 2010 audited financial statements, and accounting related to that transaction, including but not limited to:
  - a. any and all electronic mail, written correspondence, and any documents prepared by, sent from, or received by the District;
  - b. any and all internal memoranda and correspondence, quality control documents, and estimates;



c. any and all documents utilized by the District concerning the calculation of the above referenced transaction;

d. any and all documents prepared by, or received from, outside consultants retained by or on behalf of the District concerning the above referenced transaction; and

e. any and all documents sufficient to identify the "landowners" that are the subject of the transaction, including contracts, agreements, and evidence of the transfer of equity to the landowners, and electronic mail and written correspondence to or from said landowners.

3. Any and all documents from January 1, 2009, to present that concern the prior period adjustment identified in Note Q of the District's 2012 audited financial statements, including but not limited to:

a. any and all electronic mail, written correspondence, and any documents prepared by, sent from, or received by the District;

b. any and all internal memoranda and correspondence, quality control documents, and estimates;

c. any and all documents utilized by the District concerning the calculation of the above referenced prior period adjustment; and

d. any and all documents prepared by, or received from, outside consultants retained by or on behalf of the District concerning the above referenced prior period adjustment;

e. any and all documents concerning the advance payment of operation and maintenance activities to the Bureau of Land Reclamation for fiscal years 2010 and 2011, which were the subject of the prior period adjustment identified in Note Q of the District's 2012 audited financial statements.

4. Any and all documents from January 1, 2009, to present that concern the Bonds. This request includes, but is not limited to, all electronic mail, written correspondence, opinions, reports, due diligence, estimates, projections, and memoranda. This request should also include documents and correspondence sent to or from the bond underwriters, bond counsel, disclosure counsel, financial advisors, consultants, and the District.

5. Any and all written accounting policies and accounting procedures of the District.

6. Any and all documents from January 1, 2009, to present concerning accounting for water allocations remaining in customer accounts monthly and at year end including, but not limited to, accounting entries to record accounts receivable, accounts payable, and related revenue, and expenses.



## U.S. Securities and Exchange Commission

### Data Delivery Standards

The following outlines the technical requirements for producing scanned paper collections, email and electronic document/native file collections to the Securities and Exchange Commission. The SEC uses Recommind® *Axcelerate* v4.5 software to search, review and retrieve documents produced to us in electronic format. Any proposed production in a format other than those identified below, the proposed use of *Predictive Coding*, *computer-assisted review* or *technology-assisted review* (TAR), or the use of de-duplication during the processing of documents, must be discussed with and approved by the legal and technical staff of the Division of Enforcement (ENF) and the methodology must be disclosed in the cover letter. We appreciate your efforts in assisting us by preparing data in a format that will enable our staff to use the data efficiently.

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#### **General Instructions**

1. A cover letter should be included with each production. *This letter MUST be imaged and provided as the first record in the load file.*  
The following information should be included in the letter:
  - a. List of each piece of media (hard drive, thumb drive, DVD or CD) included in the production by the unique number assigned to it, and readily apparent on the physical media.
  - b. List of custodians, identifying:
    - 1) The Bates range (and any gaps therein) for each custodian
    - 2) Total number of records for each custodian
    - 3) Total number of images for each custodian
    - 4) Total number of native files for each custodian
  - c. List of fields in the order in which they are listed in the data file.
  - d. Time zone in which emails were standardized during conversion (email collections only).
2. Documents created or stored electronically MUST be produced in their original electronic format, not printed to paper or PDF.
3. Data can be produced on CD, DVD or hard drive; *use the media requiring the least number of deliverables.*
4. Label all media with the following:
  - a. Case number
  - b. Production date
  - c. Bates range
  - d. Disk number (1 of X), if applicable

5. Organize productions by custodian, unless otherwise instructed. All documents from an individual custodian should be confined to a single load file.
6. All productions should be checked and produced free of computer viruses.
7. All produced media should be encrypted.
8. Passwords for documents, files, compressed archives and encrypted media should be provided separately either via email or in a separate cover letter from the data.

## Delivery Formats

### I. Structured Data - *Concordance®* Format

The SEC prefers that all data be produced in structured format prepared for *Concordance®*. All scanned paper, email and native file collections should be converted / processed to TIFF files, Bates numbered, and include fully searchable text. Additionally, email and native file collections should include linked native files.

Bates numbering documents:

The Bates number must be a unique, consistently formatted identifier, i.e., an alpha prefix along with a fixed length number for EACH custodian, i.e., ABC0000001. This format MUST remain consistent across all production numbers for each custodian. The number of digits in the numeric portion of the format should not change in subsequent productions, nor should spaces, hyphens, or other separators be added or deleted.

The following describes the specifications for producing image-based productions to the SEC and the load files required for *Concordance®* and *Concordance Image®*.

#### 1. Images

- a. Images should be single-page, Group IV TIFF files, scanned at 300 dpi.
- b. File names cannot contain embedded spaces.
- c. Bates numbers should be endorsed on the lower right corner of all images.
- d. The number of TIFF files per folder should not exceed 500 files.
- e. Rendering to images PowerPoint, AUTOCAD/ photographs and Excel files:
  - 1) PowerPoint: All pages of the file should be scanned in full slide image format, with any speaker notes following the appropriate slide image.
  - 2) AUTOCAD/ photographs: If possible, files should be scanned to single page JPEG (.JPG) file format.
  - 3) Excel: TIFF images of spreadsheets are not useful for review purposes; because the imaging process can often generate thousands of pages per file, a placeholder image, named by the *IMAGEID* of the file, may be used instead.

#### 2. *Concordance Image®* Cross-Reference File

The image cross-reference file is needed to link the images to the database. It is a comma-delimited file consisting of seven fields per line. There must be a line in the cross-reference file for every image in the database.

The format is as follows:

*ImageID, VolumeLabel, ImageFilePath, DocumentBreak, FolderBreak, BoxBreak, PageCount*

*ImageID:* The unique designation that *Concordance®* and *Concordance Image®* use to identify an image.  
*Note: This imageID key must be a unique and fixed length number. This number will be used in the .DAT file as the ImageID field that links the database to the images. The format of this image key must be consistent across all productions. We recommend that the format be a 7 digit number to allow for the possible increase in the size of a production.*

*VolumeLabel:* Optional

*ImageFilePath:* The full path to the image file.

*DocumentBreak:* The letter "Y" denotes the first page of a document. If this field is blank, then the page is not the first page of a document.

*FolderBreak:* Leave empty

*BoxBreak:* Leave empty

*PageCount:* Optional

Sample

```
IMG0000001,,E:\001\IMG0000001.TIF,Y,,,
IMG0000002,,E:\001\IMG0000002.TIF,,,,
IMG0000003,,E:\001\IMG0000003.TIF,,,,
IMG0000004,,E:\001\IMG0000003.TIF,Y,,,
IMG0000005,,E:\001\IMG0000003.TIF,Y,,,
IMG0000006,,E:\001\IMG0000003.TIF,,,,
```

### 3. Concordance® Data File

The data file (.DAT) contains all of the fielded information that will be loaded into the Concordance® database.

- a. The first line of the .DAT file must be a header row identifying the field names.
- b. The .DAT file must use the following Concordance® default delimiters:
 

Comma	,	ASCII character (020)
Quote	"	ASCII character (254)
Newline	␣	ASCII character (174)
- c. Date fields should be provided in the format: mm/dd/yyyy
- d. All attachments should sequentially follow the parent document/email.
- e. All metadata associated with email, audio files, and native electronic document collections must be produced (see pages 4-5).
- f. The .DAT file for scanned paper collections must contain, at a minimum, the following fields:
  - 1) FIRSTBATES: Beginning Bates number
  - 2) LASTBATES: Ending Bates number
  - 3) IMAGEID: Image Key field
  - 4) CUSTODIAN: Individual from whom the document originated
  - 5) OCRTEXT: Optical Character Recognition (file path, or text)

Sample of .DAT file (when text files are provided separately)

```
pFIRSTBATESp"pLASTBATESp"pIMAGEIDp"pCUSTODIANp"pOCRTEXTp
pPC00000001p"pPC00000002p"pIMG0000001p"pSmith, Johnp"pE:\TEXT\PC00000001.TXTp
pPC00000003p"pPC00000003p"pIMG0000003p"pSmith, Johnp"pE:\TEXT\PC00000003.TXTp
pPC00000004p"pPC00000005p"pIMG0000004p"pSmith, Johnp"pE:\TEXT\PC00000004.TXTp
```

Sample of .DAT file (with text)

```
pFIRSTBATESp"pLASTBATESp"pIMAGEIDp"pCUSTODIANp"pOCRTEXTp
pPC00000001p"pPC00000002p"pIMG0000001p"pSmith, Johnp"p*** IMG0000001 ***The world of
investing is fascinating and complex, and it can be very fruitful. But unlike the banking
world, where deposits are guaranteed by the federal government, stocks, bonds and other
securities can lose value. There are no guarantees. That's why investing is not a spectator
sport. By far the best way for investors to protect the money they put into the securities
markets is to do research and ask questions.*** IMG0000002 ***The laws and rules that
govern the securities industry in the United States derive from a simple and
straightforward concept: all investors, whether large institutions or private individuals,
should have access to certain basic facts about an investment prior to buying it, and so
long as they hold it. To achieve this, the SEC requires public companies to disclose
meaningful financial and other information to the public. This provides a common pool of
knowledge for all investors to use to judge for themselves whether to buy, sell, or hold a
particular security. Only through the steady flow of timely, comprehensive, and accurate
information can people make sound investment decisions.p
pPC00000003p"pPC00000003p"pIMG0000003p"pSmith, Johnp"p***IMG0000003 ***The result of this
information flow is a far more active, efficient, and transparent capital market that
facilitates the capital formation so important to our nation's economy.p
pPC00000004p"pPC00000005p"pIMG0000004p"pSmith, Johnp"p *** IMG0000004 ***To insure that
this objective is always being met, the SEC continually works with all major market
participants, including especially the investors in our securities markets, to listen to
their concerns and to learn from their experience.*** IMG0000005 ***The SEC oversees
the key participants in the securities world, including securities exchanges, securities
brokers and dealers, investment advisors, and mutual funds. Here the SEC is concerned
primarily with promoting the disclosure of important market-related information,
maintaining fair dealing, and protecting against fraud.p
```

The text and metadata of Email and the attachments, and native file document collections should be extracted and provided in a .DAT file using the field definition and formatting described below:

Field Name	Sample Data	Description
FIRSTBATES	EDC0000001	First Bates number of native file document/email
LASTBATES	EDC0000001	Last Bates number of native file document/email **The LASTBATES field should be populated for single page documents/emails.
ATTACHRANGE	EDC0000001 - EDC0000015	Bates number of the first page of the parent document to the Bates number of the last page of the last attachment "child" document
BEGATTACH	EDC0000001	First Bates number of attachment range
ENDATTACH	EDC0000015	Last Bates number of attachment range
PARENT_BATES	EDC0000001	First Bates number of parent document/Email **This PARENT_BATES field should be populated in each record representing an attachment "child" document
CHILD_BATES	EDC0000002; EDC0000014	First Bates number of "child" attachment(s); can be more than one Bates number listed depending on the number of attachments **The CHILD_BATES field should be populated in each record representing a "parent" document
CUSTODIAN	Smith, John	Email: mailbox where the email resided Native: Individual from whom the document originated
FROM	John Smith	Email: Sender Native: Author(s) of document **semi-colon should be used to separate multiple Entries
TO	Coffman, Janice; LeeW [mailto:LeeW@MSN.com]	Recipient(s) **semi-colon should be used to separate multiple Entries
CC	Frank Thompson [mailto:frank_Thompson@cdt.com]	Carbon copy recipient(s) **semi-colon should be used to separate multiple Entries
BCC	John Cain	Blind carbon copy recipient(s) **semi-colon should be used to separate multiple Entries
SUBJECT	Board Meeting Minutes	Email: Subject line of the email Native: Title of document (if available)
DATE_SENT	10/12/2010	Email: Date the email was sent Native: (empty)
TIME_SENT	07:05 PM	Email: Time the email was sent Native: (empty) **This data must be a separate field and cannot be combined with the DATE_SENT field
LINK	D:\001\EDC0000001.msg	Hyperlink to the email or native file document **The linked file must be named per the FIRSTBATES number
MIME_TYPE	MSG	The content type of an Email or native file document as identified/extracted from the header
FILE_EXTEN	MSG	The file type extension representing the Email or native file document; will vary depending on the email format
AUTHOR	John Smith	Email: (empty) Native: Author of the document
DATE_CREATED	10/10/2010	Email: (empty) Native: Date the document was created

U.S. Securities and Exchange Commission  
Data Delivery Standards

TIME_CREATED	10:25 AM	Email: (empty) Native: Time the document was created **This data must be a separate field and cannot be combined with the DATE_CREATED field
DATE_MOD	10/12/2010	Email: (empty) Native: Date the document was last modified
TIME_MOD	07:00 PM	Email: (empty) Native: Time the document was last modified **This data must be a separate field and cannot be combined with the DATE_MOD field
DATE_ACCESSD	10/12/2010	Email: (empty) Native: Date the document was last accessed
TIME_ACCESSD	07:00 PM	Email: (empty) Native: Time the document was last accessed **This data must be a separate field and cannot be combined with the DATE_ACCESSD field
PRINTED_DATE	10/12/2010	Email: (empty) Native: Date the document was last printed
FILE_SIZE	5,952	Size of native file document/email in KB
PGCOUNT	1	Number of pages in native file document/email
PATH	J:\Shared\SmithJ\October Agenda.doc	Email: (empty) Native: Path where native file document was stored including original file name.
INTFILEPATH	Personal Folders\Deleted Items\Board Meeting Minutes.msg	Email: original location of email including original file name. Native: (empty)
INTMSGID	<000805c2c71b\$75977050\$cb8306d1@MSN>	Email: Unique Message ID Native: (empty)
MD5HASH	d131dd02c5e6eec4693d9a0698aff95c2fcab58712467eab4004583eb8fb7f89	MD5 Hash value of the document.
TEXT	From: Smith, John Sent: Tuesday, October 12, 2010 07:05 PM To: Coffman, Janice Subject: Board Meeting Minutes  Janice; Attached is a copy of the September Board Meeting Minutes and the draft agenda for October. Please let me know if you have any questions.  John Smith Assistant Director Information Technology Phone: (202) 555-1111 Fax: (202) 555-1112 Email: jsmith@xyz.com	Extracted text of the native file document/email

#### 4. Text

Searchable text of the entire document must be provided for every record, at the document level.

- a. Extracted text must be provided for all documents that originated in electronic format. The text files should include page breaks that correspond to the 'pagination' of the image files. Note: Any document in which text cannot be extracted must be OCR'd, particularly in the case of PDFs without embedded text.
- b. OCR text must be provided for all documents that originated in hard copy format. A page marker should be placed at the beginning, or end, of each page of text, e.g. \*\*\* IMG0000001 \*\*\* whenever possible. The data surrounded by asterisks is the *Concordance®* ImageID.

Sample page markers with OCR text:

\*\*\* IMG0000001 \*\*\*

The world of investing is fascinating and complex, and it can be very fruitful. But unlike the banking world, where deposits are guaranteed by the federal government, stocks, bonds and other securities can lose value. There are no guarantees. That's why investing is not a spectator sport. By far the best way for investors to protect the money they put into the securities markets is to do research and ask questions.

\*\*\* IMG0000002 \*\*\*

The laws and rules that govern the securities industry in the United States derive from a simple and straightforward concept: all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it. To achieve this, the SEC requires public companies to disclose meaningful financial and other information to the public. This provides a common pool of knowledge for all investors to use to judge for themselves whether to buy, sell, or hold a particular security. Only through the steady flow of timely, comprehensive, and accurate information can people make sound investment decisions.

- c. For redacted documents, provide the full text for the redacted version.
- d. Delivery  
The text can be delivered two ways:
  - 1) As multi-page ASCII text files with the files named the same as the ImageID field. Text files can be placed in a separate folder or included with the .TIF files. The number of files per folder should be limited to 500 files.
  - 2) Included in the .DAT file.

#### 5. Linked Native Files

Copies of original email and native file documents/attachments must be included for all electronic productions.

- a. Native file documents must be named per the FIRSTBATES number.
- b. The full path of the native file must be provided in the .DAT file for the LINK field.
- c. The number of native files per folder should not exceed 500 files.

## II. Native File Production

The SEC will also accept native file productions. The files must be produced as they are maintained in the normal course of business. Data must be organized by custodian named file folders.

## III. Audio Files

Audio files from telephone recording systems must be produced in a format that is playable using Microsoft Windows Media Player™. Additionally, the call information (metadata) related to each audio recording MUST be provided. The metadata file must be produced in a delimited text format. Field names must be included in the first row of the text file.

The metadata must include, at a minimum, the following fields:

- 1) Caller Name: Caller's name or account/identification number
- 2) Originating Number: Caller's phone number
- 3) Called Party Name: Called party's name
- 4) Terminating Number: Called party's phone number

- 
- |              |                        |
|--------------|------------------------|
| 5) Date:     | Date of call           |
| 6) Time:     | Time of call           |
| 7) Filename: | Filename of audio file |

**IV. Video Files**

Video files must be produced in a format that is playable using Microsoft Windows Media Player™.

**V. Electronic Trade and Bank Records**

When producing electronic trade and bank records, provide the files in one of the following formats:

1. MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.
2. Delimited text file with header information detailing the field structure. The preferred delimiter is a vertical bar "|". If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.

**VI. Electronic Phone Records**

When producing electronic phone records, provide the files in one of the following formats:

1. MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details. Data must be formatted in its native format (i.e. dates in a date format, numbers in an appropriate numerical format, and numbers with leading zeros as text).
2. Delimited text file with header information detailing the field structure. The preferred delimiter is a vertical bar "|". If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.

The metadata must include, at a minimum, the following fields in separate columns:

- |                        |                                   |
|------------------------|-----------------------------------|
| 1) Account Number:     | Caller's telephone account number |
| 2) Originating Number: | Caller's phone number             |
| 3) Terminating Number: | Called party's phone number       |
| 4) Connection Date:    | Date of call                      |
| 5) Connection Time:    | Start time of call                |
| 6) End Time:           | End time of call                  |
| 7) Elapsed Time:       | Duration in minutes of the call   |

Each field of data must be loaded into a separate column. For example, Connection Date and Connection Time must be produced in separate columns and not combined into a single column containing both pieces of information. Any fields of data that are provided in addition to those listed here must also be loaded into separate columns.



**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**Supplemental Information for Persons Requested to Supply  
Information Voluntarily or Directed to Supply Information  
Pursuant to a Commission Subpoena**

**A. False Statements and Documents**

Section 1001 of Title 18 of the United States Code provides as follows:

[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years . . . or both.

**B. Testimony**

If your testimony is taken, you should be aware of the following:

1. *Record.* Your testimony will be transcribed by a reporter. If you desire to go off the record, please indicate this to the Commission employee taking your testimony, who will determine whether to grant your request. The reporter will not go off the record at your, or your counsel's, direction.
2. *Counsel.* You have the right to be accompanied, represented and advised by counsel of your choice. Your counsel may advise you before, during and after your testimony; question you briefly at the conclusion of your testimony to clarify any of the answers you give during testimony; and make summary notes during your testimony solely for your use. If you are accompanied by counsel, you may consult privately.

If you are not accompanied by counsel, please advise the Commission employee taking your testimony if, during the testimony, you desire to be accompanied, represented and advised by counsel. Your testimony will be adjourned once to afford you the opportunity to arrange to be so accompanied, represented or advised.

You may be represented by counsel who also represents other persons involved in the Commission's investigation. This multiple representation, however, presents a potential conflict of interest if one client's interests are or may be adverse to another's. If you are represented by counsel who also represents other persons involved in the investigation, the Commission will assume that you and counsel have discussed and resolved all issues concerning possible conflicts of interest. The choice of counsel, and the responsibility for that choice, is yours.

3. *Transcript Availability.* Rule 6 of the Commission's Rules Relating to Investigations, 17 CFR 203.6, states:

A person who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees: *Provided, however,* That in a nonpublic formal investigative proceeding the Commission may for good cause deny such request. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony.

If you wish to purchase a copy of the transcript of your testimony, the reporter will provide you with a copy of the appropriate form. Persons requested to supply information voluntarily will be allowed the rights provided by this rule.

4. *Perjury.* Section 1621 of Title 18 of the United States Code provides as follows:

Whoever--

- (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;  
is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both.

5. *Fifth Amendment and Voluntary Testimony.* Information you give may be used against you in any federal, state, local or foreign administrative, civil or criminal proceeding brought by the Commission or any other agency.

You may refuse, in accordance with the rights guaranteed to you by the Fifth Amendment to the Constitution of the United States, to give any information that may tend to incriminate you.

If your testimony is not pursuant to subpoena, your appearance to testify is voluntary, you need not answer any question, and you may leave whenever you wish. Your cooperation is, however, appreciated.

6. *Formal Order Availability.* If the Commission has issued a formal order of investigation, it will be shown to you during your testimony, at your request. If you desire a copy of the formal order, please make your request in writing.

### **C. Submissions and Settlements**

Rule 5(c) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(c), states:

Persons who become involved in . . . investigations may, on their own initiative, submit a written statement to the Commission setting forth their interests and position in regard to the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them, and the amount of time that may be available for preparing and submitting a statement prior to the presentation of a staff recommendation to the Commission for the commencement of an administrative or injunction proceeding. Submissions by interested persons should be forwarded to the appropriate Division Director or Regional Director with a copy to the staff members conducting the investigation and should be clearly referenced to the specific investigation to which they relate. In the event a recommendation for the commencement of an enforcement proceeding is presented by the staff, any submissions by interested persons will be forwarded to the Commission in conjunction with the staff memorandum.

The staff of the Commission routinely seeks to introduce submissions made pursuant to Rule 5(c) as evidence in Commission enforcement proceedings, when the staff deems appropriate.

Rule 5(f) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(f), states:

In the course of the Commission's investigations, civil lawsuits, and administrative proceedings, the staff, with appropriate authorization, may discuss with persons involved the disposition of such matters by consent, by settlement, or in some other manner. It is the policy of the Commission, however, that the disposition of any such matter may not, expressly or impliedly, extend to any criminal charges that have been, or may be, brought against any such person or any recommendation with respect thereto. Accordingly, any person involved in an enforcement matter before the Commission who consents, or agrees to consent, to any judgment or order does so solely for the purpose of resolving the claims against him in that investigative, civil, or administrative matter and not for the purpose of resolving any criminal charges that have been, or might be, brought against him. This policy reflects the fact that neither the Commission nor its staff has the authority or responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and representatives of the Department of Justice.

### **D. Freedom of Information Act**

The Freedom of Information Act, 5 U.S.C. 552 (the "FOIA"), generally provides for disclosure of information to the public. Rule 83 of the Commission's Rules on Information and Requests, 17 CFR 200.83, provides a procedure by which a person can make a written request that information submitted to the Commission not be disclosed under the FOIA. That rule states that no determination as to the validity of such a request will be made until a request for disclosure of the information under the FOIA is received. Accordingly, no response to a request that information not be disclosed under the FOIA is necessary or will be given until a request for disclosure under the FOIA is received. If you desire an acknowledgment of receipt of your written request that information not be disclosed under the FOIA, please provide a duplicate request, together with a stamped, self addressed envelope.

#### **E. Authority for Solicitation of Information**

*Persons Directed to Supply Information Pursuant to Subpoena.* The authority for requiring production of information is set forth in the subpoena. Disclosure of the information to the Commission is mandatory, subject to the valid assertion of any legal right or privilege you might have.

*Persons Requested to Supply Information Voluntarily.* One or more of the following provisions authorizes the Commission to solicit the information requested: Sections 19 and/or 20 of the Securities Act of 1933; Section 21 of the Securities Exchange Act of 1934; Section 321 of the Trust Indenture Act of 1939; Section 42 of the Investment Company Act of 1940; Section 209 of the Investment Advisers Act of 1940; and 17 CFR 202.5. Disclosure of the requested information to the Commission is voluntary on your part.

#### **F. Effect of Not Supplying Information**

*Persons Directed to Supply Information Pursuant to Subpoena.* If you fail to comply with the subpoena, the Commission may seek a court order requiring you to do so. If such an order is obtained and you thereafter fail to supply the information, you may be subject to civil and/or criminal sanctions for contempt of court. In addition, if the subpoena was issued pursuant to the Securities Exchange Act of 1934, the Investment Company Act of 1940, and/or the Investment Advisers Act of 1940, and if you, without just cause, fail or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, correspondence, memoranda, and other records in compliance with the subpoena, you may be found guilty of a misdemeanor and fined not more than \$1,000 or imprisoned for a term of not more than one year, or both.

*Persons Requested to Supply Information Voluntarily.* There are no direct sanctions and thus no direct effects for failing to provide all or any part of the requested information.

#### **G. Principal Uses of Information**

The Commission's principal purpose in soliciting the information is to gather facts in order to determine whether any person has violated, is violating, or is about to violate any provision of the federal securities laws or rules for which the Commission has enforcement authority, such as rules of securities exchanges and the rules of the Municipal Securities Rulemaking Board. Facts developed may, however, constitute violations of other laws or rules. Information provided may be used in Commission and other agency enforcement proceedings. Unless the Commission or its staff explicitly agrees to the contrary in writing, you should not assume that the Commission or its staff acquiesces in, accedes to, or concurs or agrees with, any position, condition, request, reservation of right, understanding, or any other statement that purports, or may be deemed, to be or to reflect a limitation upon the Commission's receipt, use, disposition, transfer, or retention, in accordance with applicable law, of information provided.

#### **H. Routine Uses of Information**

The Commission often makes its files available to other governmental agencies, particularly United States Attorneys and state prosecutors. There is a likelihood that information supplied by you will be made available to such agencies where appropriate. Whether or not the Commission makes its files available to other governmental agencies is, in general, a confidential matter between the Commission and such other governmental agencies.

Set forth below is a list of the routine uses which may be made of the information furnished.

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.
2. To other federal, state, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.
3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; state securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.

4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.
5. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.
6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).
7. To a bar association, state accountancy board, or other federal, state, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.
8. To a federal, state, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.
9. To a federal, state, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.
10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.
11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of Practice, 17 CFR 201.100 – 900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100-1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.
12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.
13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.
14. In reports published by the Commission pursuant to authority granted in the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a)).
15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.
16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735-1 to 200.735-18, and who assists in the investigation by the Commission of possible violations of the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

18. To members of Congress, the press, and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction.

19. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78c(a)(47)), as amended.

20. To respond to subpoenas in any litigation or other proceeding.

21. To a trustee in bankruptcy.

22. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

\* \* \* \* \*

*Small Business Owners:* The SEC always welcomes comments on how it can better assist small businesses. If you have comments about the SEC's enforcement of the securities laws, please contact the Office of Chief Counsel in the SEC's Division of Enforcement at 202-551-4933 or the SEC's Small Business Ombudsman at 202-551-3460. If you would prefer to comment to someone outside of the SEC, you can contact the Small Business Regulatory Enforcement Ombudsman at <http://www.sba.gov/ombudsman> or toll free at 888-REG-FAIR. The Ombudsman's office receives comments from small businesses and annually evaluates federal agency enforcement activities for their responsiveness to the special needs of small business.

[FOR DOMESTIC U.S. RECORDS]

**DECLARATION OF [Insert Name] CERTIFYING RECORDS  
OF REGULARLY CONDUCTED BUSINESS ACTIVITY**

I, the undersigned, [insert name], pursuant to 28 U.S.C. § 1746, declare that:

1. I am employed by [insert name of company] as [insert position] and by reason of my position am authorized and qualified to make this declaration. [if possible supply additional information as to how person is qualified to make declaration, e.g., I am custodian of records, I am familiar with the company's recordkeeping practices or systems, etc.]
2. I further certify that the documents [attached hereto or submitted herewith] and stamped [insert bates range] are true copies of records that were:
  - (a) made at or near the time of the occurrence of the matters set forth therein, by, or from information transmitted by, a person with knowledge of those matters;
  - (b) kept in the course of regularly conducted business activity; and
  - (c) made by the regularly conducted business activity as a regular practice.

I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].

---

[Name]



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

SAN FRANCISCO REGIONAL OFFICE  
44 MONTGOMERY STREET, SUITE 2800  
SAN FRANCISCO, CALIFORNIA 94104-4802

DIVISION OF ENFORCEMENT

BRIAN P. KNIGHT  
Municipal Securities &  
Public Pensions Unit  
Telephone: 415-705-2364  
Facsimile: 415-705-2501  
knightb@sec.gov

October 10, 2013

Via UPS

Westlands Water District  
c/o Thomas W. Birmingham, General Manager  
3130 N. Fresno Street  
Fresno, CA 93703

Re: **In the Matter of Westlands Water District (SF-03899)**

Dear Mr. Birmingham:

The staff of the Securities and Exchange Commission is conducting an investigation in the matter identified above. The enclosed subpoena has been issued to you as part of this investigation. The subpoena requires you to provide documents by **Monday, October 28, 2013**.

Please read the subpoena and this letter carefully. This letter answers some questions you may have about the subpoena. You should also read the enclosed SEC Form 1662. You must comply with the subpoena. You may be subject to a fine and/or imprisonment if you do not.

**Producing Documents**

*What materials do I have to produce?*

The subpoena requires you to give us the documents described in the attachment to the subpoena. You must provide these documents by October 28, 2013. The attachment to the subpoena defines some terms (such as "document") before listing what you must provide.

Please note that if copies of a document differ in any way, they are considered separate documents and you must send each one. For example, if you have two copies of the same letter, but only one of them has handwritten notes on it, you must send both the clean copy and the one with notes.

If you prefer, you may send us photocopies of the originals. The Commission cannot reimburse you for the copying costs. The copies must be identical to the originals, including even faint marks or print. If you choose to send copies, you must keep the originals in a safe place. The staff will accept the copies for now, but may require you to produce the originals later.

If you do send us photocopies, please put an identifying notation on each page of each document to indicate that it was produced by you, and number the pages of all the documents submitted. (For example, if Jane Doe sends documents to the staff, she may number the pages JD-1, JD-2, JD-3, etc., in a blank corner of the documents.) Please make sure the notation and number do not conceal any writing or marking on the document. If you send us originals, please do not add any identifying notations.

*Do I need to send anything else?*

You should enclose a list briefly describing each item you send. The list should state which paragraph(s) in the subpoena attachment each item responds to. A copy of the subpoena should be included with the documents that are produced.

Passwords for documents, files, compressed archives, and encrypted media should be provided separately either via email addressed to ENF-CPU@sec.gov, or in a separate cover letter mailed separately from the data.

Please include a cover letter stating whether you believe you have met your obligations under the subpoena by searching carefully and thoroughly for everything called for by the subpoena, and sending it all to us.

*What if I do not send everything described in the attachment to the subpoena?*

The subpoena requires you to send all the materials described in it. If, for any reason -- including a claim of attorney-client privilege -- you do not produce something called for by the subpoena, you should submit a list of what you are not producing. The list should describe each item separately, noting:

- its author(s);
- its date;
- its subject matter;
- the name of the person who has the item now, or the last person known to have it;
- the names of everyone who ever had the item or a copy of it, and the names of everyone who was told the item's contents; and
- the reason you did not produce the item.

If you withhold anything on the basis of a claim of attorney-client privilege or attorney work product protection, you should also identify the attorney and client involved.

*Where should I send the materials?*

Please send the materials to:

ENF-CPU  
U.S. Securities and Exchange Commission  
100 F St., N.E., Mailstop 5973  
Washington, DC 20549-5973



For smaller electronic productions under 10MB in size, the materials may be emailed to the following email address: ENF-CPU@sec.gov.

**Other Important Information**

*May I have a lawyer help me respond to the subpoena?*

Yes. You have the right to consult with and be represented by your own lawyer in this matter. Your lawyer may also advise and accompany you when you testify. We cannot give you legal advice.

*What will the Commission do with the materials I send and the testimony I provide?*

The enclosed SEC Form 1662 includes a List of Routine Uses of information provided to the Commission. This form has other important information for you. Please read it carefully.

*Has the Commission determined that anyone has done anything wrong?*

This investigation is a non-public, fact-finding inquiry. We are trying to determine whether there have been any violations of the federal securities laws. The investigation and the subpoena do not mean that we have concluded that you or anyone else has broken the law. Also, the investigation does not mean that we have a negative opinion of any person, entity or security.

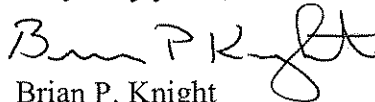
*Important Policy Concerning Settlements*

Please note that, in any matter in which enforcement action is ultimately deemed to be warranted, the Division of Enforcement will not recommend any settlement to the Commission unless the party wishing to settle certifies, under penalty of perjury, that all documents responsive to Commission subpoenas and formal and informal document requests in this matter have been produced.

*I have read this letter, the subpoena, and the SEC Form 1662, but I still have questions. What should I do?*

If you have any other questions, you may call me at (415) 705-2364. If you are represented by a lawyer, you should have your lawyer contact me.

Very truly yours,



Brian P. Knight

Attorney, Division of Enforcement

Enclosures: Subpoena with Attachment  
SEC Data Delivery Standards  
SEC Form 1662  
Business Records Certification



**SUBPOENA**  
**UNITED STATES OF AMERICA**  
**SECURITIES AND EXCHANGE COMMISSION**

**In the Matter of Westlands Water District (SF-03899)**

To: Westlands Water District  
c/o Thomas W. Birmingham, General Manager  
3130 N. Fresno Street  
Fresno, CA 93703

☒ **YOU MUST PRODUCE** everything specified in the Attachment to this subpoena to officers of the Securities and Exchange Commission, at the place and by the date and time specified below:

**Place:** ENF-CPU  
U.S. Securities and Exchange Commission  
100 F St., N.E., Mailstop 5973  
Washington, DC 20549-5973

**Date/Time:** October 28, 2013, at 10:00 a.m.

---

☐ **YOU MUST TESTIFY** before officers of the Securities and Exchange Commission, at the place, date and time specified below:

**Place:**

**Date/Time:**

---

**FEDERAL LAW REQUIRES YOU TO COMPLY WITH THIS SUBPOENA.**

Failure to comply may subject you to a fine and/or imprisonment.

By: Brian P. Knight  
Brian P. Knight  
Securities and Exchange Commission  
44 Montgomery Street, Suite 2800  
San Francisco, CA 94104  
(415) 705-2475

Date: October 10, 2013

I am an officer of the Securities and Exchange Commission authorized to issue subpoenas in this matter. The Securities and Exchange Commission has issued a Formal Order authorizing this investigation under Section 21(a) of the Securities Exchange Act of 1934.

**Attachment to Subpoena to Westlands Water District  
In the Matter of Westlands Water District  
(SF-03899)  
October 10, 2013**

**I. Definitions**

1. The term "District" means the Westlands Water District and all of its divisions, affiliates, predecessors, successors, officers, directors, employees, agents, partners, and independent contractors, as well as aliases, code names, trade names, or business names used by, or formerly used by, any of the foregoing.
2. The term "SSP" refers to Sampson, Sampson & Patterson, LLP and all of its divisions, affiliates, predecessors, successors, officers, directors, employees, agents, partners, and independent contractors, as well as aliases, code names, trade names, or business names used by, or formerly used by, any of the foregoing.
3. The terms "document" and "documents" mean all materials in the possession, custody or control of SSP, whether drafts, unfinished, or annotated versions, originals or nonconforming copies thereof, however created, produced, or stored (manually, mechanically, electronically or otherwise), and by whomever prepared, produced, sent, dated, received, or used, including without limitation: books, charts, papers, files, lists, notes, minutes, summaries, records, analyses, correspondence, memoranda, work papers, financial information, budgets, invoices, spreadsheets, ledger sheets, confirmations, invoices, account statements, reports, wires, telegrams, telexes, telephone logs, message slips, schedules, transcriptions, notes or records of conversations or meetings, contracts, agreements, calendars, diaries, date books, bills, records of payment, magnetic tapes, tape recordings, disks, diskettes, disk packs and other electronic media, microfilm, microfiche, electronic mail, electronic data compilations, all other storage devices, and all of the foregoing reflecting communications.
4. Reference to a person shall also include that person's trusts, affiliates, employees, agents, partners, and independent contractors, as well as aliases, code names, trade names, or business names used by, or formerly used by, any of the foregoing.
5. Reference to an entity shall also include that entity's parents, subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, partners, and independent contractors, as well as aliases, code names, trade names, or business names used by, or formerly used by, any of the foregoing.
6. The terms "communication" and "communications" include any transmittal or receipt of information, whether by chance or prearranged, formal or informal, oral, written or electronic, and includes without limitation: conversations, meetings and discussions in person; conversations, meetings and discussions by telephone; and written correspondence through the use of the mails, courier services, electronic media (such as electronic mail), and telephone lines and wires.
7. The term "Bonds" means the Refunding Revenue Bonds, Series 2012A issued by the District in October 2012.
8. The disjunctive ("or") shall be deemed to include the conjunctive ("and"), and the conjunctive ("and") shall be deemed to include the disjunctive ("or"); and each of the

functional words “each,” “every,” “any” and “all” shall be deemed to include each of the other functional words.

9. Documents that “refer” or “relate” to any given subject mean any communication or document that constitutes, contains, embodies, evidences, reflects, identifies, states, deals with, bears upon, or is in any way pertinent to that subject, including documents concerning the preparation of other documents.

## **II. Instructions**

1. Unless otherwise specified, the subpoena calls for production of the original Documents and all copies and drafts of same. Documents responsive to this subpoena may be in electronic or paper form. Electronic Documents such as email should be produced in accordance with the attached Document entitled SEC Data Delivery Standards. All electronic Documents responsive to the Document subpoena, including all metadata, should also be produced in their native software format.
2. For Documents in paper format, you may send the originals, or, if you prefer, you may send copies of the originals. The Commission cannot reimburse you for the copying costs. If you are sending copies, the staff requests that you scan (rather than photocopy) hard copy Documents and produce them in an electronic format consistent with the SEC Data Delivery Standards. Alternatively, you may send us photocopies of the Documents in paper format. If you choose to send copies, you must secure and retain the originals and store them in a safe place. The staff may later request or require that you produce the originals.
3. Whether you scan or photocopy Documents, the copies must be identical to the originals, including even faint marks or print. Also, please note that if copies of a Document differ in any way, they are considered separate Documents and you must send each one. For example, if you have two copies of the same letter, but only one of them has handwritten notes on it, you must send both the clean copy and the one with notes.
4. In producing a photocopy of an original Document that contains post-it(s), notation flag(s), or other removable markings or attachments which may conceal all or a portion of the markings contained in the original Document, photocopies of the original Document both with and without the relevant post-it(s), notation flag(s), or removable markings or attachments should be produced.
5. Documents should be produced as they are kept in the ordinary course of business or be organized and labeled to correspond with the categories in this request. In that regard, Documents should be produced in a unitized manner, i.e., delineated with staples or paper clips to identify the Document boundaries.
6. Documents should be labeled with sequential numbering (bates-stamped).
7. You must produce all Documents created during, or concerning, the period January 1, 2009, to the present, unless otherwise specified.
8. The scope of any given request should not be limited or narrowed based on the fact that it calls for Documents that are responsive to another request.
9. You are not required to produce exact duplicates of any Documents that have been previously produced to the Securities and Exchange Commission staff in connection with

this matter. If you are not producing Documents based upon a prior production, please identify the responsive Documents that were previously produced.

10. For any Documents that qualify as records of regularly conducted activities under Federal Rule of Evidence 902(11), please complete a business records certification (a sample of which is enclosed) and return it with the Document production.
11. This subpoena covers all Documents in or subject to your possession, custody or control, including all Documents that are not in your immediate possession but that you have the effective ability to obtain, that are responsive, in whole or in part, to any of the individual requests set forth below. If, for any reason – including a claim of attorney-client privilege – you do not produce something called for by the request, you should submit a list of what it is not producing. The list should describe each item separately, noting:
  - a. its author(s);
  - b. its date;
  - c. its subject matter;
  - d. the name of the Person who has the item now, or the last Person known to have it;
  - e. the names of everyone who ever had the item or a copy of it, and the names of everyone who was told the item's contents;
  - f. the basis upon which you are not producing the responsive Document;
  - g. the specific request in the subpoena to which the Document relates;
  - h. the attorney(s) and the client(s) involved; and
  - i. in the case of the work product doctrine, the litigation for which the Document was prepared in anticipation.
12. If Documents responsive to this subpoena no longer exist because they have been lost, discarded, or otherwise destroyed, you should identify such Documents and give the date on which they were lost, discarded or destroyed.

### **III. Documents to Be Produced**

Please produce all of the following Documents within the District's possession or custody or subject to the District's control:

1. A complete set of minutes, agendas, recordings, notices, notes, and memoranda relating to all meetings of the District Board, the Finance and Administration Committee, and the Legal Affairs Committee, from January 1, 2009, to present.
2. Any and all documents from January 1, 2009, to present that concern the "return of equity to landowners" transaction noted in the District's 2010 audited financial statements, and accounting related to that transaction, including but not limited to:
  - a. any and all electronic mail, written correspondence, and any documents prepared by, sent from, or received by the District;
  - b. any and all internal memoranda and correspondence, quality control documents, and estimates;

c. any and all documents utilized by the District concerning the calculation of the above referenced transaction;

d. any and all documents prepared by, or received from, outside consultants retained by or on behalf of the District concerning the above referenced transaction; and

e. any and all documents sufficient to identify the "landowners" that are the subject of the transaction, including contracts, agreements, and evidence of the transfer of equity to the landowners, and electronic mail and written correspondence to or from said landowners.

3. Any and all documents from January 1, 2009, to present that concern the prior period adjustment identified in Note Q of the District's 2012 audited financial statements, including but not limited to:

a. any and all electronic mail, written correspondence, and any documents prepared by, sent from, or received by the District;

b. any and all internal memoranda and correspondence, quality control documents, and estimates;

c. any and all documents utilized by the District concerning the calculation of the above referenced prior period adjustment; and

d. any and all documents prepared by, or received from, outside consultants retained by or on behalf of the District concerning the above referenced prior period adjustment;

e. any and all documents concerning the advance payment of operation and maintenance activities to the Bureau of Land Reclamation for fiscal years 2010 and 2011, which were the subject of the prior period adjustment identified in Note Q of the District's 2012 audited financial statements.

4. Any and all documents from January 1, 2009, to present that concern the Bonds. This request includes, but is not limited to, all electronic mail, written correspondence, opinions, reports, due diligence, estimates, projections, and memoranda. This request should also include documents and correspondence sent to or from the bond underwriters, bond counsel, disclosure counsel, financial advisors, consultants, and the District.

5. Any and all written accounting policies and accounting procedures of the District.

6. Any and all documents from January 1, 2009, to present concerning accounting for water allocations remaining in customer accounts monthly and at year end including, but not limited to, accounting entries to record accounts receivable, accounts payable, and related revenue, and expenses.



## U.S. Securities and Exchange Commission

### Data Delivery Standards

The following outlines the technical requirements for producing scanned paper collections, email and electronic document/native file collections to the Securities and Exchange Commission. The SEC uses Recommind® *Axcelerate* v4.5 software to search, review and retrieve documents produced to us in electronic format. Any proposed production in a format other than those identified below, the proposed use of *Predictive Coding*, *computer-assisted review* or *technology-assisted review* (TAR), or the use of de-duplication during the processing of documents, must be discussed with and approved by the legal and technical staff of the Division of Enforcement (ENF) and the methodology must be disclosed in the cover letter. We appreciate your efforts in assisting us by preparing data in a format that will enable our staff to use the data efficiently.

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#### General Instructions

1. A cover letter should be included with each production. *This letter MUST be imaged and provided as the first record in the load file.*  
The following information should be included in the letter:
  - a. List of each piece of media (hard drive, thumb drive, DVD or CD) included in the production by the unique number assigned to it, and readily apparent on the physical media.
  - b. List of custodians, identifying:
    - 1) The Bates range (and any gaps therein) for each custodian
    - 2) Total number of records for each custodian
    - 3) Total number of images for each custodian
    - 4) Total number of native files for each custodian
  - c. List of fields in the order in which they are listed in the data file.
  - d. Time zone in which emails were standardized during conversion (email collections only).
2. Documents created or stored electronically MUST be produced in their original electronic format, not printed to paper or PDF.
3. Data can be produced on CD, DVD or hard drive; *use the media requiring the least number of deliverables.*
4. Label all media with the following:
  - a. Case number
  - b. Production date
  - c. Bates range
  - d. Disk number (1 of X), if applicable

5. Organize productions by custodian, unless otherwise instructed. All documents from an individual custodian should be confined to a single load file.
6. All productions should be checked and produced free of computer viruses.
7. All produced media should be encrypted.
8. Passwords for documents, files, compressed archives and encrypted media should be provided separately either via email or in a separate cover letter from the data.

## Delivery Formats

### I. Structured Data - *Concordance®* Format

The SEC prefers that all data be produced in structured format prepared for *Concordance®*. All scanned paper, email and native file collections should be converted / processed to TIFF files, Bates numbered, and include fully searchable text. Additionally, email and native file collections should include linked native files.

Bates numbering documents:

The Bates number must be a unique, consistently formatted identifier, i.e., an alpha prefix along with a fixed length number for EACH custodian, i.e., ABC0000001. This format MUST remain consistent across all production numbers for each custodian. The number of digits in the numeric portion of the format should not change in subsequent productions, nor should spaces, hyphens, or other separators be added or deleted.

The following describes the specifications for producing image-based productions to the SEC and the load files required for *Concordance®* and *Concordance Image®*.

#### 1. Images

- a. Images should be single-page, Group IV TIFF files, scanned at 300 dpi.
- b. File names cannot contain embedded spaces.
- c. Bates numbers should be endorsed on the lower right corner of all images.
- d. The number of TIFF files per folder should not exceed 500 files.
- e. Rendering to images PowerPoint, AUTOCAD/ photographs and Excel files:
  - 1) PowerPoint: All pages of the file should be scanned in full slide image format, with any speaker notes following the appropriate slide image.
  - 2) AUTOCAD/ photographs: If possible, files should be scanned to single page JPEG (.JPG) file format.
  - 3) Excel: TIFF images of spreadsheets are not useful for review purposes; because the imaging process can often generate thousands of pages per file, a placeholder image, named by the *IMAGEID* of the file, may be used instead.

#### 2. *Concordance Image®* Cross-Reference File

The image cross-reference file is needed to link the images to the database. It is a comma-delimited file consisting of seven fields per line. There must be a line in the cross-reference file for every image in the database.

The format is as follows:

*ImageID, VolumeLabel, ImageFilePath, DocumentBreak, FolderBreak, BoxBreak, PageCount*

*ImageID:* The unique designation that *Concordance®* and *Concordance Image®* use to identify an image.  
*Note: This imageID key must be a unique and fixed length number. This number will be used in the .DAT file as the ImageID field that links the database to the images. The format of this image key must be consistent across all productions. We recommend that the format be a 7 digit number to allow for the possible increase in the size of a production.*

*VolumeLabel:* Optional

*ImageFilePath:* The full path to the image file.

*DocumentBreak:* The letter "Y" denotes the first page of a document. If this field is blank, then the page is not the first page of a document.

*FolderBreak:* Leave empty

*BoxBreak:* Leave empty

*PageCount:* Optional



Sample

```
IMG0000001,,E:\001\IMG0000001.TIF,Y,,,
IMG0000002,,E:\001\IMG0000002.TIF,,,,
IMG0000003,,E:\001\IMG0000003.TIF,,,,
IMG0000004,,E:\001\IMG0000003.TIF,Y,,,
IMG0000005,,E:\001\IMG0000003.TIF,Y,,,
IMG0000006,,E:\001\IMG0000003.TIF,,,,
```

### 3. Concordance® Data File

The data file (.DAT) contains all of the fielded information that will be loaded into the Concordance® database.

- a. The first line of the .DAT file must be a header row identifying the field names.
- b. The .DAT file must use the following Concordance® default delimiters:
 

Comma	,	ASCII character (020)
Quote	"	ASCII character (254)
Newline	␣	ASCII character (174)
- c. Date fields should be provided in the format: mm/dd/yyyy
- d. All attachments should sequentially follow the parent document/email.
- e. All metadata associated with email, audio files, and native electronic document collections must be produced (see pages 4-5).
- f. The .DAT file for scanned paper collections must contain, at a minimum, the following fields:
  - 1) FIRSTBATES: Beginning Bates number
  - 2) LASTBATES: Ending Bates number
  - 3) IMAGEID: Image Key field
  - 4) CUSTODIAN: Individual from whom the document originated
  - 5) OCRTEXT: Optical Character Recognition (file path, or text)

Sample of .DAT file (when text files are provided separately)

```
pFIRSTBATESp"pLASTBATESp"pIMAGEIDp"pCUSTODIANp"pOCRTEXTp
pPC00000001p"pPC00000002p"pIMG0000001p"pSmith, Johnp"pE:\TEXT\PC00000001.TXTp
pPC00000003p"pPC00000003p"pIMG0000003p"pSmith, Johnp"pE:\TEXT\PC00000003.TXTp
pPC00000004p"pPC00000005p"pIMG0000004p"pSmith, Johnp"pE:\TEXT\PC00000004.TXTp
```

Sample of .DAT file (with text)

```
pFIRSTBATESp"pLASTBATESp"pIMAGEIDp"pCUSTODIANp"pOCRTEXTp
pPC00000001p"pPC00000002p"pIMG0000001p"pSmith, Johnp"p*** IMG0000001 ***The world of
investing is fascinating and complex, and it can be very fruitful. But unlike the banking
world, where deposits are guaranteed by the federal government, stocks, bonds and other
securities can lose value. There are no guarantees. That's why investing is not a spectator
sport. By far the best way for investors to protect the money they put into the securities
markets is to do research and ask questions.*** IMG0000002 ***The laws and rules that
govern the securities industry in the United States derive from a simple and
straightforward concept: all investors, whether large institutions or private individuals,
should have access to certain basic facts about an investment prior to buying it, and so
long as they hold it. To achieve this, the SEC requires public companies to disclose
meaningful financial and other information to the public. This provides a common pool of
knowledge for all investors to use to judge for themselves whether to buy, sell, or hold a
particular security. Only through the steady flow of timely, comprehensive, and accurate
information can people make sound investment decisions.p
pPC00000003p"pPC00000003p"pIMG0000003p"pSmith, Johnp"p***IMG0000003 ***The result of this
information flow is a far more active, efficient, and transparent capital market that
facilitates the capital formation so important to our nation's economy.p
pPC00000004p"pPC00000005p"pIMG0000004p"pSmith, Johnp"p *** IMG0000004 ***To insure that
this objective is always being met, the SEC continually works with all major market
participants, including especially the investors in our securities markets, to listen to
their concerns and to learn from their experience.*** IMG0000005 ***The SEC oversees
the key participants in the securities world, including securities exchanges, securities
brokers and dealers, investment advisors, and mutual funds. Here the SEC is concerned
primarily with promoting the disclosure of important market-related information,
maintaining fair dealing, and protecting against fraud.p
```

The text and metadata of Email and the attachments, and native file document collections should be extracted and provided in a .DAT file using the field definition and formatting described below:

Field Name	Sample Data	Description
FIRSTBATES	EDC0000001	First Bates number of native file document/email
LASTBATES	EDC0000001	Last Bates number of native file document/email **The LASTBATES field should be populated for single page documents/emails.
ATTACHRANGE	EDC0000001 - EDC0000015	Bates number of the first page of the parent document to the Bates number of the last page of the last attachment "child" document
BEGATTACH	EDC0000001	First Bates number of attachment range
ENDATTACH	EDC0000015	Last Bates number of attachment range
PARENT_BATES	EDC0000001	First Bates number of parent document/Email **This PARENT_BATES field should be populated in each record representing an attachment "child" document
CHILD_BATES	EDC0000002; EDC0000014	First Bates number of "child" attachment(s); can be more than one Bates number listed depending on the number of attachments **The CHILD_BATES field should be populated in each record representing a "parent" document
CUSTODIAN	Smith, John	Email: mailbox where the email resided Native: Individual from whom the document originated
FROM	John Smith	Email: Sender Native: Author(s) of document **semi-colon should be used to separate multiple Entries
TO	Coffman, Janice; LeeW [mailto:LeeW@MSN.com]	Recipient(s) **semi-colon should be used to separate multiple Entries
CC	Frank Thompson [mailto:frank_Thompson@cdt.com]	Carbon copy recipient(s) **semi-colon should be used to separate multiple Entries
BCC	John Cain	Blind carbon copy recipient(s) **semi-colon should be used to separate multiple Entries
SUBJECT	Board Meeting Minutes	Email: Subject line of the email Native: Title of document (if available)
DATE_SENT	10/12/2010	Email: Date the email was sent Native: (empty)
TIME_SENT	07:05 PM	Email: Time the email was sent Native: (empty) **This data must be a separate field and cannot be combined with the DATE_SENT field
LINK	D:\001\EDC0000001.msg	Hyperlink to the email or native file document **The linked file must be named per the FIRSTBATES number
MIME_TYPE	MSG	The content type of an Email or native file document as identified/extracted from the header
FILE_EXTEN	MSG	The file type extension representing the Email or native file document; will vary depending on the email format
AUTHOR	John Smith	Email: (empty) Native: Author of the document
DATE_CREATED	10/10/2010	Email: (empty) Native: Date the document was created

U.S. Securities and Exchange Commission  
Data Delivery Standards

TIME_CREATED	10:25 AM	Email: (empty) Native: Time the document was created **This data must be a separate field and cannot be combined with the DATE_CREATED field
DATE_MOD	10/12/2010	Email: (empty) Native: Date the document was last modified
TIME_MOD	07:00 PM	Email: (empty) Native: Time the document was last modified **This data must be a separate field and cannot be combined with the DATE_MOD field
DATE_ACCESSD	10/12/2010	Email: (empty) Native: Date the document was last accessed
TIME_ACCESSD	07:00 PM	Email: (empty) Native: Time the document was last accessed **This data must be a separate field and cannot be combined with the DATE_ACCESSD field
PRINTED_DATE	10/12/2010	Email: (empty) Native: Date the document was last printed
FILE_SIZE	5,952	Size of native file document/email in KB
PGCOUNT	1	Number of pages in native file document/email
PATH	J:\Shared\SmithJ\October Agenda.doc	Email: (empty) Native: Path where native file document was stored including original file name.
INTFILEPATH	Personal Folders\Deleted Items\Board Meeting Minutes.msg	Email: original location of email including original file name. Native: (empty)
INTMSGID	<000805c2c71b\$75977050\$cb8306d1@MSN>	Email: Unique Message ID Native: (empty)
MD5HASH	d131dd02c5e6eec4693d9a0698aff95c2fcab58712467eab4004583eb8fb7f89	MD5 Hash value of the document.
TEXT	From: Smith, John Sent: Tuesday, October 12, 2010 07:05 PM To: Coffman, Janice Subject: Board Meeting Minutes  Janice; Attached is a copy of the September Board Meeting Minutes and the draft agenda for October. Please let me know if you have any questions.  John Smith Assistant Director Information Technology Phone: (202) 555-1111 Fax: (202) 555-1112 Email: jsmith@xyz.com	Extracted text of the native file document/email

#### 4. Text

Searchable text of the entire document must be provided for every record, at the document level.

- a. Extracted text must be provided for all documents that originated in electronic format. The text files should include page breaks that correspond to the 'pagination' of the image files. Note: Any document in which text cannot be extracted must be OCR'd, particularly in the case of PDFs without embedded text.
- b. OCR text must be provided for all documents that originated in hard copy format. A page marker should be placed at the beginning, or end, of each page of text, e.g. \*\*\* IMG0000001 \*\*\* whenever possible. The data surrounded by asterisks is the *Concordance®* ImageID.

Sample page markers with OCR text:

\*\*\* IMG0000001 \*\*\*

The world of investing is fascinating and complex, and it can be very fruitful. But unlike the banking world, where deposits are guaranteed by the federal government, stocks, bonds and other securities can lose value. There are no guarantees. That's why investing is not a spectator sport. By far the best way for investors to protect the money they put into the securities markets is to do research and ask questions.

\*\*\* IMG0000002 \*\*\*

The laws and rules that govern the securities industry in the United States derive from a simple and straightforward concept: all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it. To achieve this, the SEC requires public companies to disclose meaningful financial and other information to the public. This provides a common pool of knowledge for all investors to use to judge for themselves whether to buy, sell, or hold a particular security. Only through the steady flow of timely, comprehensive, and accurate information can people make sound investment decisions.

- c. For redacted documents, provide the full text for the redacted version.
- d. Delivery  
The text can be delivered two ways:
  - 1) As multi-page ASCII text files with the files named the same as the ImageID field. Text files can be placed in a separate folder or included with the .TIF files. The number of files per folder should be limited to 500 files.
  - 2) Included in the .DAT file.

#### 5. Linked Native Files

Copies of original email and native file documents/attachments must be included for all electronic productions.

- a. Native file documents must be named per the FIRSTBATES number.
- b. The full path of the native file must be provided in the .DAT file for the LINK field.
- c. The number of native files per folder should not exceed 500 files.

## II. Native File Production

The SEC will also accept native file productions. The files must be produced as they are maintained in the normal course of business. Data must be organized by custodian named file folders.

## III. Audio Files

Audio files from telephone recording systems must be produced in a format that is playable using Microsoft Windows Media Player™. Additionally, the call information (metadata) related to each audio recording MUST be provided. The metadata file must be produced in a delimited text format. Field names must be included in the first row of the text file.

The metadata must include, at a minimum, the following fields:

- 1) Caller Name: Caller's name or account/identification number
- 2) Originating Number: Caller's phone number
- 3) Called Party Name: Called party's name
- 4) Terminating Number: Called party's phone number

- 
- |              |                        |
|--------------|------------------------|
| 5) Date:     | Date of call           |
| 6) Time:     | Time of call           |
| 7) Filename: | Filename of audio file |

#### IV. Video Files

Video files must be produced in a format that is playable using Microsoft Windows Media Player™.

#### V. Electronic Trade and Bank Records

When producing electronic trade and bank records, provide the files in one of the following formats:

1. MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.
2. Delimited text file with header information detailing the field structure. The preferred delimiter is a vertical bar "|". If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.

#### VI. Electronic Phone Records

When producing electronic phone records, provide the files in one of the following formats:

1. MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details. Data must be formatted in its native format (i.e. dates in a date format, numbers in an appropriate numerical format, and numbers with leading zeros as text).
2. Delimited text file with header information detailing the field structure. The preferred delimiter is a vertical bar "|". If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.

The metadata must include, at a minimum, the following fields in separate columns:

- |                        |                                   |
|------------------------|-----------------------------------|
| 1) Account Number:     | Caller's telephone account number |
| 2) Originating Number: | Caller's phone number             |
| 3) Terminating Number: | Called party's phone number       |
| 4) Connection Date:    | Date of call                      |
| 5) Connection Time:    | Start time of call                |
| 6) End Time:           | End time of call                  |
| 7) Elapsed Time:       | Duration in minutes of the call   |

Each field of data must be loaded into a separate column. For example, Connection Date and Connection Time must be produced in separate columns and not combined into a single column containing both pieces of information. Any fields of data that are provided in addition to those listed here must also be loaded into separate columns.

**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**Supplemental Information for Persons Requested to Supply  
Information Voluntarily or Directed to Supply Information  
Pursuant to a Commission Subpoena**

**A. False Statements and Documents**

Section 1001 of Title 18 of the United States Code provides as follows:

[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years . . . or both.

**B. Testimony**

If your testimony is taken, you should be aware of the following:

1. *Record.* Your testimony will be transcribed by a reporter. If you desire to go off the record, please indicate this to the Commission employee taking your testimony, who will determine whether to grant your request. The reporter will not go off the record at your, or your counsel's, direction.
2. *Counsel.* You have the right to be accompanied, represented and advised by counsel of your choice. Your counsel may advise you before, during and after your testimony; question you briefly at the conclusion of your testimony to clarify any of the answers you give during testimony; and make summary notes during your testimony solely for your use. If you are accompanied by counsel, you may consult privately.

If you are not accompanied by counsel, please advise the Commission employee taking your testimony if, during the testimony, you desire to be accompanied, represented and advised by counsel. Your testimony will be adjourned once to afford you the opportunity to arrange to be so accompanied, represented or advised.

You may be represented by counsel who also represents other persons involved in the Commission's investigation. This multiple representation, however, presents a potential conflict of interest if one client's interests are or may be adverse to another's. If you are represented by counsel who also represents other persons involved in the investigation, the Commission will assume that you and counsel have discussed and resolved all issues concerning possible conflicts of interest. The choice of counsel, and the responsibility for that choice, is yours.

3. *Transcript Availability.* Rule 6 of the Commission's Rules Relating to Investigations, 17 CFR 203.6, states:

A person who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees: *Provided, however,* That in a nonpublic formal investigative proceeding the Commission may for good cause deny such request. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony.

If you wish to purchase a copy of the transcript of your testimony, the reporter will provide you with a copy of the appropriate form. Persons requested to supply information voluntarily will be allowed the rights provided by this rule.

4. *Perjury.* Section 1621 of Title 18 of the United States Code provides as follows:

Whoever--

- (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;  
is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both.

5. *Fifth Amendment and Voluntary Testimony.* Information you give may be used against you in any federal, state, local or foreign administrative, civil or criminal proceeding brought by the Commission or any other agency.

You may refuse, in accordance with the rights guaranteed to you by the Fifth Amendment to the Constitution of the United States, to give any information that may tend to incriminate you.

If your testimony is not pursuant to subpoena, your appearance to testify is voluntary, you need not answer any question, and you may leave whenever you wish. Your cooperation is, however, appreciated.

6. *Formal Order Availability.* If the Commission has issued a formal order of investigation, it will be shown to you during your testimony, at your request. If you desire a copy of the formal order, please make your request in writing.

### **C. Submissions and Settlements**

Rule 5(c) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(c), states:

Persons who become involved in . . . investigations may, on their own initiative, submit a written statement to the Commission setting forth their interests and position in regard to the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them, and the amount of time that may be available for preparing and submitting a statement prior to the presentation of a staff recommendation to the Commission for the commencement of an administrative or injunction proceeding. Submissions by interested persons should be forwarded to the appropriate Division Director or Regional Director with a copy to the staff members conducting the investigation and should be clearly referenced to the specific investigation to which they relate. In the event a recommendation for the commencement of an enforcement proceeding is presented by the staff, any submissions by interested persons will be forwarded to the Commission in conjunction with the staff memorandum.

The staff of the Commission routinely seeks to introduce submissions made pursuant to Rule 5(c) as evidence in Commission enforcement proceedings, when the staff deems appropriate.

Rule 5(f) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(f), states:

In the course of the Commission's investigations, civil lawsuits, and administrative proceedings, the staff, with appropriate authorization, may discuss with persons involved the disposition of such matters by consent, by settlement, or in some other manner. It is the policy of the Commission, however, that the disposition of any such matter may not, expressly or impliedly, extend to any criminal charges that have been, or may be, brought against any such person or any recommendation with respect thereto. Accordingly, any person involved in an enforcement matter before the Commission who consents, or agrees to consent, to any judgment or order does so solely for the purpose of resolving the claims against him in that investigative, civil, or administrative matter and not for the purpose of resolving any criminal charges that have been, or might be, brought against him. This policy reflects the fact that neither the Commission nor its staff has the authority or responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and representatives of the Department of Justice.

### **D. Freedom of Information Act**

The Freedom of Information Act, 5 U.S.C. 552 (the "FOIA"), generally provides for disclosure of information to the public. Rule 83 of the Commission's Rules on Information and Requests, 17 CFR 200.83, provides a procedure by which a person can make a written request that information submitted to the Commission not be disclosed under the FOIA. That rule states that no determination as to the validity of such a request will be made until a request for disclosure of the information under the FOIA is received. Accordingly, no response to a request that information not be disclosed under the FOIA is necessary or will be given until a request for disclosure under the FOIA is received. If you desire an acknowledgment of receipt of your written request that information not be disclosed under the FOIA, please provide a duplicate request, together with a stamped, self addressed envelope.

#### **E. Authority for Solicitation of Information**

*Persons Directed to Supply Information Pursuant to Subpoena.* The authority for requiring production of information is set forth in the subpoena. Disclosure of the information to the Commission is mandatory, subject to the valid assertion of any legal right or privilege you might have.

*Persons Requested to Supply Information Voluntarily.* One or more of the following provisions authorizes the Commission to solicit the information requested: Sections 19 and/or 20 of the Securities Act of 1933; Section 21 of the Securities Exchange Act of 1934; Section 321 of the Trust Indenture Act of 1939; Section 42 of the Investment Company Act of 1940; Section 209 of the Investment Advisers Act of 1940; and 17 CFR 202.5. Disclosure of the requested information to the Commission is voluntary on your part.

#### **F. Effect of Not Supplying Information**

*Persons Directed to Supply Information Pursuant to Subpoena.* If you fail to comply with the subpoena, the Commission may seek a court order requiring you to do so. If such an order is obtained and you thereafter fail to supply the information, you may be subject to civil and/or criminal sanctions for contempt of court. In addition, if the subpoena was issued pursuant to the Securities Exchange Act of 1934, the Investment Company Act of 1940, and/or the Investment Advisers Act of 1940, and if you, without just cause, fail or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, correspondence, memoranda, and other records in compliance with the subpoena, you may be found guilty of a misdemeanor and fined not more than \$1,000 or imprisoned for a term of not more than one year, or both.

*Persons Requested to Supply Information Voluntarily.* There are no direct sanctions and thus no direct effects for failing to provide all or any part of the requested information.

#### **G. Principal Uses of Information**

The Commission's principal purpose in soliciting the information is to gather facts in order to determine whether any person has violated, is violating, or is about to violate any provision of the federal securities laws or rules for which the Commission has enforcement authority, such as rules of securities exchanges and the rules of the Municipal Securities Rulemaking Board. Facts developed may, however, constitute violations of other laws or rules. Information provided may be used in Commission and other agency enforcement proceedings. Unless the Commission or its staff explicitly agrees to the contrary in writing, you should not assume that the Commission or its staff acquiesces in, accedes to, or concurs or agrees with, any position, condition, request, reservation of right, understanding, or any other statement that purports, or may be deemed, to be or to reflect a limitation upon the Commission's receipt, use, disposition, transfer, or retention, in accordance with applicable law, of information provided.

#### **H. Routine Uses of Information**

The Commission often makes its files available to other governmental agencies, particularly United States Attorneys and state prosecutors. There is a likelihood that information supplied by you will be made available to such agencies where appropriate. Whether or not the Commission makes its files available to other governmental agencies is, in general, a confidential matter between the Commission and such other governmental agencies.

Set forth below is a list of the routine uses which may be made of the information furnished.

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.
2. To other federal, state, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.
3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; state securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.



4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.
5. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.
6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).
7. To a bar association, state accountancy board, or other federal, state, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.
8. To a federal, state, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.
9. To a federal, state, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.
10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.
11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of Practice, 17 CFR 201.100 – 900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100-1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.
12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.
13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.
14. In reports published by the Commission pursuant to authority granted in the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a)).
15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.
16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735-1 to 200.735-18, and who assists in the investigation by the Commission of possible violations of the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

18. To members of Congress, the press, and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction.

19. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78c(a)(47)), as amended.

20. To respond to subpoenas in any litigation or other proceeding.

21. To a trustee in bankruptcy.

22. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

\* \* \* \* \*

*Small Business Owners:* The SEC always welcomes comments on how it can better assist small businesses. If you have comments about the SEC's enforcement of the securities laws, please contact the Office of Chief Counsel in the SEC's Division of Enforcement at 202-551-4933 or the SEC's Small Business Ombudsman at 202-551-3460. If you would prefer to comment to someone outside of the SEC, you can contact the Small Business Regulatory Enforcement Ombudsman at <http://www.sba.gov/ombudsman> or toll free at 888-REG-FAIR. The Ombudsman's office receives comments from small businesses and annually evaluates federal agency enforcement activities for their responsiveness to the special needs of small business.

[FOR DOMESTIC U.S. RECORDS]

**DECLARATION OF *[Insert Name]* CERTIFYING RECORDS  
OF REGULARLY CONDUCTED BUSINESS ACTIVITY**

I, the undersigned, *[insert name]*, pursuant to 28 U.S.C. § 1746, declare that:

1. I am employed by *[insert name of company]* as *[insert position]* and by reason of my position am authorized and qualified to make this declaration. *[if possible supply additional information as to how person is qualified to make declaration, e.g., I am custodian of records, I am familiar with the company's recordkeeping practices or systems, etc.]*
2. I further certify that the documents *[attached hereto or submitted herewith]* and stamped *[insert bates range]* are true copies of records that were:
  - (a) made at or near the time of the occurrence of the matters set forth therein, by, or from information transmitted by, a person with knowledge of those matters;
  - (b) kept in the course of regularly conducted business activity; and
  - (c) made by the regularly conducted business activity as a regular practice.

I declare under penalty of perjury that the foregoing is true and correct. Executed on *[date]*.

---

*[Name]*



**BETTY T. YEE**  
**California State Controller**

June 8, 2018

District Fiscal Officer  
Westlands Water District  
3130 N. Fresno Street  
P.O. Box 6056  
Fresno, CA 93703-6056

**SUBJECT: Special Districts Financial Transactions Report for Fiscal Year 2017-18**

Dear District Fiscal Officer:

This letter is to inform you that the State Controller's Office (SCO) is revising the 2017-18 Financial Transactions Report (FTR) forms to incorporate minor changes. The SCO will mail the alert packages for the 2017-18 FTR in October 2018, and the report will be due January 31, 2019. Please note that the due dates, per Government Code section 53891, have not changed, and in future years, you will be required to submit your FTR within seven months after the close of your fiscal year.

If you have any questions regarding the changes, please contact the Special Districts Reporting Unit by telephone at (916) 327-1017 or by email at [SDsupport@sco.ca.gov](mailto:SDsupport@sco.ca.gov).

Sincerely,

A handwritten signature in dark ink, appearing to read "Edward Serafica", is written over a light blue horizontal line.

EDWARD SERAFICA, Supervisor  
Local Government Reporting Section



**BETTY T. YEE**  
**California State Controller**

June 8, 2018

District Fiscal Officer  
Broadview Water District  
P.O. Box 6056  
Fresno, CA 93703-6056

**SUBJECT: Special Districts Financial Transactions Report for Fiscal Year 2017-18**

Dear District Fiscal Officer:

This letter is to inform you that the State Controller's Office (SCO) is revising the 2017-18 Financial Transactions Report (FTR) forms to incorporate minor changes. The SCO will mail the alert packages for the 2017-18 FTR in October 2018, and the report will be due January 31, 2019. Please note that the due dates, per Government Code section 53891, have not changed, and in future years, you will be required to submit your FTR within seven months after the close of your fiscal year.

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Sincerely,

A handwritten signature in dark ink, appearing to read "Edward Serafica", is written over a light blue horizontal line.

EDWARD SERAFICA, Supervisor  
Local Government Reporting Section



UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**  
100 F Street, N.E.  
Washington, D.C. 20549

OFFICE OF  
THE SECRETARY

MAR 09 2016

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Louie David Ciapponi  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625

Re: In the Matter of Westlands Water District, Thomas W. Birmingham,  
and Louie David Ciapponi

Dear Mr. Ciapponi:

Please find enclosed the Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (the "Order") in the above-referenced matter. The Commission has determined to accept your Offer of Settlement, dated January 28, 2016, and accordingly, has issued the enclosed Order. The sanctions and cease-and-desist order imposed by the Order shall be effective immediately.

If you have any questions or wish to discuss any aspect of the proceedings, you may communicate with Brian P. Knight, Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104, at (415) 705-2364.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brent J. Fields".

Brent J. Fields  
Secretary

Enclosure

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 10053 / March 9, 2016**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3752 / March 9, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17162**

**In the Matter of**

**WESTLANDS WATER  
DISTRICT, THOMAS W.  
BIRMINGHAM, and  
LOUIE DAVID CIAPPONI**

**Respondents.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933, MAKING FINDINGS, AND  
IMPOSING A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), against Westlands Water District ("Westlands"), Thomas W. Birmingham, and Louie David Ciapponi (collectively "Respondents").

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

### III.

On the basis of this Order and Respondents' Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. This matter involves misrepresentations and omissions by Westlands in the Official Statement for its October 2012 offering of \$77 million in Refunding Revenue Bonds, Series 2012A (the "2012 Bonds"). The Official Statement for the 2012 Bonds was misleading in its treatment of one key metric for Fiscal Year 2010: Westlands' debt service coverage ratio. The debt service coverage ratio is important to investors because it signals whether an issuer has sufficient ability to meet its debt service obligations. In prior bond offerings, Westlands had covenanted to fix and collect water rates at least sufficient to generate net revenues equal to at least 125% of its debt service payments for that year. Failure by Westlands to meet that 1.25 debt service coverage ratio could be a technical default on its bonds which could lead to undesirable outcomes, including higher interest rates on future bonds, ratings downgrades, and an inability to sell bonds in the following fiscal year.

2. The Official Statement for the 2012 Bonds contained a table representing that Westlands had met or exceeded the required debt service coverage ratio for each of the prior five years.<sup>2</sup> For fiscal year 2010, however, the revenue and coverage ratio reported in the table were misleading because Westlands failed to disclose: (1) that it had engaged in extraordinary accounting transactions in 2010 *solely* to recognize additional revenue for purposes of calculating the debt service coverage ratio without raising rates on customers, and (2) the impact of a 2012 prior period adjustment to account for expenses that would have decreased revenue in 2010 and negatively affected the ratio.

3. In the latter half of fiscal year 2010, Westlands staff informed Birmingham and Ciapponi that, because of reductions in water supply, Westlands would not generate sufficient revenue to achieve a 1.25 debt service coverage ratio. At Ciapponi's direction, Westlands staff consulted with its independent auditor about accounting transactions that could be implemented to avoid raising water rates in order to meet a 1.25 debt service coverage ratio. Subsequently, Westlands staff, including Birmingham and Ciapponi, advised Westlands' Finance and Administration Committee that it recommend to Westlands' Board of Directors (the "Board") to approve two accounting transactions to recognize additional revenue. These transactions and their effect on revenue and the debt service coverage ratio were not disclosed in the Official Statement for the 2012 Bonds. Separately, in 2012, Westlands adjusted the accounting for certain expenses. Had these expenses been recorded in 2010, the 2010 debt service coverage ratio would have been negatively affected. While this prior period adjustment was disclosed in the Official Statement for the 2012 Bonds, its impact on the 2010 debt service coverage ratio was not disclosed. If the effect of the 2010 and 2012 accounting transactions on the debt service

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> Westland's fiscal year ends on February 28. Unless otherwise specified in this Order, references to specific years are to fiscal years.



coverage ratio had been disclosed, Westlands' coverage ratio for 2010 would have been 0.11, rather than the 1.25 which was reported in the Official Statement.

4. As a result of the conduct described herein, Westlands violated Section 17(a)(2) of the Securities Act and Birmingham and Ciapponi caused Westlands' violation.

### Respondents

5. **Westlands Water District** is headquartered in Fresno, California and is the largest agricultural water district in California. Westlands is a public agency of the State of California, originally formed in 1952 for the primary purpose of providing irrigation water to customers within the district. Its customers are approximately 700 agricultural land owners and water users and approximately 200 municipal and industrial land owners and water users. Westlands' Board is elected by land owners in the district, and as a result, Westlands is managed by representatives of its customers. For 2014, Westlands had operating revenues in excess of \$120 million.

6. **Thomas W. Birmingham**, age 60, of Sacramento, California, has served as the General Manager of Westlands, the highest executive level position, from October 2000 through the present. He is a member of the State Bar of California and also served as Westlands' General Counsel through May 2010 and was reappointed General Counsel in September 2015.

7. **Louie David Ciapponi** age 64, of Fresno, California, was the Assistant General Manager of Westlands from June 1995 to June 2012. Since June 2012 Ciapponi has been employed as the General Manager of a neighboring water district that had previously been annexed by Westlands. While employed at the other water district, Ciapponi continued to perform many of the same functions for Westlands that he had previously performed. He is also presently serving as Westlands' Secretary, a position he has held since 1995, and was Westlands' Treasurer from 1995 to December 16, 2015.

### Facts

#### Westlands' Rate Covenant

8. In most years, Westlands purchases the majority of the water it sells to its customers from the United States Bureau of Reclamation ("USBR") and is required to pay a share of USBR's capital costs and operations and maintenance expenses. In drought years such as 2010, the USBR often reduces the quantity of water it makes available to Westlands, forcing Westlands to purchase water from other, more expensive, sources. Westlands charges its customers for the cost of water it sells and collects additional fees both for its own operational expenses and the share of the USBR expenses it pays.

9. In prior debt offerings, Westlands had covenanted, to the fullest extent permitted by law, to fix and prescribe, and collect customers' water rates and charges at least sufficient during each fiscal year to yield net revenues equal to 125% of the debt service payable in that fiscal year. The purpose of this covenant is to assure investors and others, including ratings agencies, that Westlands will have sufficient ability to meet its debt service obligations on the

bonds. Westlands has significant incentive to maintain the 1.25 ratio because a failure to do so could preclude Westlands from issuing bonds in the following fiscal year. Failure to maintain the ratio could also result in higher borrowing costs in future debt offerings and could negatively affect Westlands' debt ratings.

10. The Official Statement for the 2012 Bonds included a table reporting the debt service coverage ratio for fiscal years 2008 through 2012. The table contains, among other operating data, columns showing five years of summary income statement information and the ratio for each year, derived from Westlands' audited financial statements, which reflects that Westlands maintained a debt service ratio of exactly 1.25 for 2010. The bond sale transaction closed on October 25, 2012.

Extraordinary Accounting Transactions in Fiscal Year 2010 to  
Increase the Debt Service Coverage Ratio

11. In October 2009, Ciapponi learned that the projected full year revenue for fiscal year 2010 would be approximately \$10 million short of what was required to maintain the 1.25 debt service coverage ratio. Westlands' fiscal year ends February 28, so it had very little time to rectify the revenue shortfall for fiscal year 2010 in order to maintain the 1.25 ratio for that year.

12. In order to meet the ratio, Westlands could have collected additional revenue by raising the water rates or other charges on its customers. This would have meant increasing water rates and land charges by about 11.6%. Westlands decided not to do so because management, including Birmingham and Ciapponi, wanted to minimize the costs on Westlands' customers. Instead, Westlands decided to reclassify certain assets as revenue. Ciapponi instructed Westlands staff to meet with Westlands' independent auditor to discuss this potential alternative to raising water rates. A memo prepared by Westlands employees and sent to Westlands' auditor in November 2009 described the proposal to "reclassify cash reserves or retained earnings" to record additional revenue "in lieu of collecting current revenue while maintaining the required debt coverage ratio." Westlands staff met with the auditor in January 2010. The auditor informed the Westlands staff that he believed the suggested transactions were permissible and subsequently issued an unqualified opinion on Westlands' 2010 audited financial statements. The auditor was not asked whether, or how, disclosure of the transactions should be made in the Official Statement. These reclassification transactions would not increase cash collections and were merely accounting transactions done for the sole purpose of maintaining the ratio.

13. Westlands staff, through Birmingham, as General Manager/General Counsel, and Ciapponi, as Assistant General Manager, presented a memorandum to Westlands' Finance and Administration Committee describing the various accounting transactions that were proposed to achieve a 1.25 debt service coverage ratio. The Finance and Administration Committee decided, based on the recommendation of staff, including Birmingham and Ciapponi, to recommend to the Westlands Board that it approve the reclassification transaction in lieu of increasing rates and charges that would be offset by credits. Subsequently, the Westlands Board approved the Finance and Administration Committee's recommendation.

14. Some of the reclassified assets came from “payable” accounts consisting of amounts that were collected from customers in previous periods but for which revenue was never recorded in the financial statements. The original intent of these accounts was to collect and retain funds to be used for the payment of certain expenses of Westlands and USBR. In the event the funds were not needed in the current fiscal year, they were retained by Westlands until they were needed for the stated purpose or otherwise dispensed at the direction of Westlands’ Board. Westlands decided to reclassify \$8.3 million from these accounts to revenue for 2010. Westlands had never previously reclassified funds from these accounts in a similar manner.

15. In addition, Westlands decided to record \$1.46 million of revenue in 2010 by means of a “return of equity” to landowners in the district. The “equity” came from a reserve fund originally established to ensure debt service payments in future years, related to a 1999 debt issue and had been funded through a rate component of customer charges collected between 1999 and 2002. Together, the two sets of transactions would result in \$9.8 million in additional revenue being recorded, solely to meet the debt service ratio covenant. Without the transactions, Westlands would have reported a debt service coverage ratio of .63.

16. At the public Board meeting at which the transactions were discussed, Birmingham and Ciapponi recommended that the Board approve the transactions. They told the Board that Westlands needed additional revenue to achieve a 1.25 debt ratio and the Board could either increase rates and charges or approve the transactions. When one Board member, who was also a Westlands customer, began to question whether rates and charges in an area in which he owned land would be raised as a result of having to meet the covenant, Birmingham joked that they were engaging in “a little Enron accounting.” Birmingham went on to state: “We’re not collecting any more money from the rate payers, nor are we paying any more money than we would otherwise pay under that the . . . um . . . to pay off the debt. All we’re doing is we’re taking money and saying we are reclassifying it from an account payable to income. And I’m told by Mr. Ciapponi that that satisfies – and he’s vetted it – that that satisfies our debt coverage with the bonds.”

17. The Board voted to approve the transactions, which were recorded as part of the year end closing process for fiscal year 2010. Other than customers who were present at the Board meeting, Westlands’ customers were not made aware that their “equity” had been returned to them. The benefit of these transactions to Westlands and its customers was twofold. First, Westlands avoided reporting a debt service coverage ratio of 0.63 for 2010 and any potential negative consequences associated with failing to meet its covenant under prior bond issuances. Second, Westlands was able to meet the debt service coverage ratio without raising its customers’ water rates.

#### The 2012 Prior Period Adjustment

18. Two years later, and separate from the transactions described above, Westlands changed the way it accounted for advance operations and maintenance payments made to the USBR in 2010 and 2011, classifying them as expenses instead of their original capitalization. Had these expenses been recorded in 2010, Westlands debt service coverage ratio would have been even lower unless Westlands had raised rates and land charges or lowered expenses in

2010. In 2012, when it changed the method by which it accounted for these payments, Westlands recorded a prior period adjustment for the fiscal year 2010 expenses, but in accordance with Generally Accepted Accounting Principles did not restate net revenue for that year. If the payments initially had been recorded as expenses in 2010, net revenue would have decreased and Westlands' debt service coverage ratio for 2010 would have been 0.73 rather than 1.25 (excluding the impact of the 2010 accounting transactions described above).

19. Westlands disclosed this prior period adjustment in a note to its audited financial statements for fiscal year 2012, which were appended to the Official Statement for the 2012 Bonds. However, Westlands did not correct the coverage ratios reported in the Historic Operating Results table for 2010 to account for the adjustment.

20. Westlands did not consider in 2012 whether the debt service coverage ratio reported for 2010 should have been revised as a result of the prior period adjustment. Ciapponi understood that, if the payments made to the USBR in 2010 had been treated in 2010 as an expense, the net revenue for that year would have been reduced, but he did not consider whether it would have affected the 2010 debt service ratio. Similarly, Birmingham was aware of the adjustment but he did not consider its effect on the 2010 debt service ratio.

The Official Statement for the 2012 Bonds Contained False and  
Misleading Statements Concerning the 2010 Debt Service Coverage Ratio

21. The Official Statement for the 2012 Bonds was false and misleading because it represented that Westlands' debt service coverage ratio for 2010 was 1.25 and, therefore, that Westland had complied with its covenants to fix water rates at levels reasonably expected to yield a debt service coverage ratio of 1.25. Westlands did not disclose that the ratio was met only because of the extraordinary transactions undertaken in 2010 to create additional purported revenue, nor did it disclose the effect the 2012 prior period adjustment would have had on the debt service coverage ratio for 2010. Had Westlands disclosed in the Official Statement the combined effect of both the 2010 transactions and the 2012 prior period adjustment, it would have reported its debt service coverage ratio for 2010 as 0.11—less than 10% of what was required. In addition, the failure to disclose the nature of the 2010 and 2012 transactions in the Official Statement masked the fact that Westlands had experienced a significant drop in net revenue in 2010.

22. The dramatic drop in Westlands' 2010 net revenue, its negative effect on the debt service coverage ratio for that year, and the effect of the 2012 prior period adjustment on the 2010 debt service coverage ratio, would have been material to investors in the 2012 Bonds.

Birmingham and Ciapponi Certified the Accuracy of the  
Official Statement on Behalf of Westlands

23. Both Birmingham and Ciapponi were involved in the issuance of the 2012 Bonds and the Official Statement. On behalf of Westlands, both Birmingham and Ciapponi signed the 2012 Bond Purchase Contract with the underwriter. As part of that contract, they certified to the underwriter that the Preliminary Official Statement and the Official Statement "contain no

misstatement of any material fact and do not omit any statement necessary to make the statements contained therein, in light of the circumstances in which such statements were made, not misleading.” Birmingham also made a similar representation in the Closing Certificate he signed on behalf of Westlands.

24. Birmingham received drafts of the Official Statement for the 2012 Bonds. He was aware of the extraordinary 2010 transactions Westlands used to record revenue solely to achieve a 1.25 debt service coverage ratio without raising rates or other charges, but did not take any steps to disclose their effect on the 2010 debt service coverage ratio reported in the Official Statement. Similarly, despite being aware that the 2012 prior period adjustment affected Westland’s net revenue for 2010, Birmingham did not consider whether the 2010 debt service coverage ratio reported in the Official Statement should have been revised.

25. Ciapponi reviewed each draft of the Official Statement as well as the final version. He was aware of the extraordinary 2010 transactions Westlands used to record revenue in order to meet the debt service coverage ratio, but did not take any steps to disclose their effect on the 2010 debt service coverage ratio which was reported in the Official Statement. Similarly, despite being aware that the 2012 prior period adjustment affected Westland’s net revenue for 2010, he did not consider whether the 2010 debt service coverage ratio reported in the Official Statement should have been revised.

### **Legal Discussion**

#### **Respondents’ Violations**

26. Section 17(a)(2) of the Securities Act makes it unlawful “in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.” 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2) and no finding of scienter is required. See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). The Commission has held that the “knew or should have known” standard is appropriate to establish negligence. See KPMG, LLP v. SEC, 289 F.3d 109, 120 (D.C. Cir. 2002). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

27. The Commission may institute cease-and-desist proceedings against any person held to be a cause of violations of the federal securities laws due to acts or omissions such person knew or should have known would contribute to the violation. See Valicenti Advisory Servs., Inc., Inv. Advisors Act Rel. No. 1774, 1998 SEC LEXIS 2497, at \*16, n.11 (Nov. 18, 1998), 53 S.E.C. 1033, 1040 n.11 (Nov. 18, 1998), aff’d, Valicenti Advisory Servs., Inc. v. SEC, 198 F.3d 62 (2d Cir. 1999). Negligence is sufficient to establish a violation for causing the primary violation. See KPMG Peat Marwick L.L.P., Exchange Act Rel. No. 43862, 2001 SEC LEXIS 98, at \*102 (Jan. 19, 2001), 54 S.E.C. 1135, 1185, aff’d, 289 F.3d 109 (D.C. Cir. 2002).

28. Birmingham and Ciapponi each knew, or should have known, that Westlands' revenue and debt service coverage ratio for 2010 as reported in the Official Statement for the 2012 Bonds were misrepresented as a result of the extraordinary transactions recorded in 2010. They were also negligent for failing to consider the effect of the 2012 prior period adjustment on the revenue and the debt service coverage ratio calculation that was reported in the Official Statement for the 2012 Bonds. The negligent conduct of Birmingham and Ciapponi is imputed to Westlands.

29. As a result of the conduct described herein, Westlands violated Section 17(a)(2) of the Securities Act and Birmingham and Ciapponi caused Westlands' violations.

#### **Cooperation and Remedial Efforts**

30. In determining to accept Respondents' offers, the Commission considered the Respondents' cooperation and prompt remedial actions, including the development of written financial disclosures policies, and staff training related to Westlands' debt offerings.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Within ten (10) days of the entry of this Order, Westlands shall pay a civil money penalty in the amount of \$125,000 and Birmingham shall pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Ciapponi shall pay a civil money penalty in the amount of \$20,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made by Ciapponi in the following installments: \$10,000 due ten (10) days from the date of the Order, and \$10,000 due twelve (12) months from the date of the Order. If any payment from Ciapponi is not made by the date the payment is required by this Order, the entire outstanding balance of his civil penalty, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment by the Respondents must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Westlands, Birmingham, or Ciapponi, respectively, as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S. C. §523, that the findings in the Order are true and admitted by Respondents Birmingham and Ciapponi, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Birmingham and Ciapponi under the Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents Birmingham and Ciapponi of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

A handwritten signature in black ink, appearing to read "Brent J. Fields". The signature is fluid and cursive, with the first name "Brent" being more prominent and the last name "Fields" written in a more compact, cursive style.

Brent J. Fields  
Secretary



Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), on the Respondents and their legal agents.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

Brian P. Knight, Esq.  
San Francisco Regional Office  
Securities and Exchange Commission  
44 Montgomery St, Suite 2800  
San Francisco, CA 94104

Westlands Water District  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625

Mr. Thomas W. Birmingham  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625

Mr. Louie David Ciapponi  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625

Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625  
(Counsel for Westlands Water District, Thomas W. Birmingham, and Louie David  
Ciapponi)

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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OFFICIAL BUSINESS



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Mr Louie David Ciappeni  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625



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UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**  
100 F Street, N.E.  
Washington, D.C. 20549

OFFICE OF  
THE SECRETARY

MAR 09 2016

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Thomas W. Birmingham  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625

Re: In the Matter of Westlands Water District, Thomas W. Birmingham,  
and Louie David Ciapponi

Dear Mr. Birmingham:

Please find enclosed the Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (the "Order") in the above-referenced matter. The Commission has determined to accept your Offer of Settlement, dated January 28, 2016, and accordingly, has issued the enclosed Order. The sanctions and cease-and-desist order imposed by the Order shall be effective immediately.

If you have any questions or wish to discuss any aspect of the proceedings, you may communicate with Brian P. Knight, Securities and Exchange Commission, San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, CA 94104, at (415) 705-2364.

Sincerely,

Brent J. Fields  
Secretary

Enclosure

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 10053 / March 9, 2016**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3752 / March 9, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17162**

**In the Matter of**

**WESTLANDS WATER  
DISTRICT, THOMAS W.  
BIRMINGHAM, and  
LOUIE DAVID CIAPPONI**

**Respondents.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933, MAKING FINDINGS, AND  
IMPOSING A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), against Westlands Water District ("Westlands"), Thomas W. Birmingham, and Louie David Ciapponi (collectively "Respondents").

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

### III.

On the basis of this Order and Respondents' Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. This matter involves misrepresentations and omissions by Westlands in the Official Statement for its October 2012 offering of \$77 million in Refunding Revenue Bonds, Series 2012A (the "2012 Bonds"). The Official Statement for the 2012 Bonds was misleading in its treatment of one key metric for Fiscal Year 2010: Westlands' debt service coverage ratio. The debt service coverage ratio is important to investors because it signals whether an issuer has sufficient ability to meet its debt service obligations. In prior bond offerings, Westlands had covenanted to fix and collect water rates at least sufficient to generate net revenues equal to at least 125% of its debt service payments for that year. Failure by Westlands to meet that 1.25 debt service coverage ratio could be a technical default on its bonds which could lead to undesirable outcomes, including higher interest rates on future bonds, ratings downgrades, and an inability to sell bonds in the following fiscal year.

2. The Official Statement for the 2012 Bonds contained a table representing that Westlands had met or exceeded the required debt service coverage ratio for each of the prior five years.<sup>2</sup> For fiscal year 2010, however, the revenue and coverage ratio reported in the table were misleading because Westlands failed to disclose: (1) that it had engaged in extraordinary accounting transactions in 2010 *solely* to recognize additional revenue for purposes of calculating the debt service coverage ratio without raising rates on customers, and (2) the impact of a 2012 prior period adjustment to account for expenses that would have decreased revenue in 2010 and negatively affected the ratio.

3. In the latter half of fiscal year 2010, Westlands staff informed Birmingham and Ciapponi that, because of reductions in water supply, Westlands would not generate sufficient revenue to achieve a 1.25 debt service coverage ratio. At Ciapponi's direction, Westlands staff consulted with its independent auditor about accounting transactions that could be implemented to avoid raising water rates in order to meet a 1.25 debt service coverage ratio. Subsequently, Westlands staff, including Birmingham and Ciapponi, advised Westlands' Finance and Administration Committee that it recommend to Westlands' Board of Directors (the "Board") to approve two accounting transactions to recognize additional revenue. These transactions and their effect on revenue and the debt service coverage ratio were not disclosed in the Official Statement for the 2012 Bonds. Separately, in 2012, Westlands adjusted the accounting for certain expenses. Had these expenses been recorded in 2010, the 2010 debt service coverage ratio would have been negatively affected. While this prior period adjustment was disclosed in the Official Statement for the 2012 Bonds, its impact on the 2010 debt service coverage ratio was not disclosed. If the effect of the 2010 and 2012 accounting transactions on the debt service

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> Westland's fiscal year ends on February 28. Unless otherwise specified in this Order, references to specific years are to fiscal years.

coverage ratio had been disclosed, Westlands' coverage ratio for 2010 would have been 0.11, rather than the 1.25 which was reported in the Official Statement.

4. As a result of the conduct described herein, Westlands violated Section 17(a)(2) of the Securities Act and Birmingham and Ciapponi caused Westlands' violation.

### **Respondents**

5. **Westlands Water District** is headquartered in Fresno, California and is the largest agricultural water district in California. Westlands is a public agency of the State of California, originally formed in 1952 for the primary purpose of providing irrigation water to customers within the district. Its customers are approximately 700 agricultural land owners and water users and approximately 200 municipal and industrial land owners and water users. Westlands' Board is elected by land owners in the district, and as a result, Westlands is managed by representatives of its customers. For 2014, Westlands had operating revenues in excess of \$120 million.

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Extraordinary Accounting Transactions in Fiscal Year 2010 to  
Increase the Debt Service Coverage Ratio

11. In October 2009, Ciapponi learned that the projected full year revenue for fiscal year 2010 would be approximately \$10 million short of what was required to maintain the 1.25 debt service coverage ratio. Westlands' fiscal year ends February 28, so it had very little time to rectify the revenue shortfall for fiscal year 2010 in order to maintain the 1.25 ratio for that year.

12. In order to meet the ratio, Westlands could have collected additional revenue by raising the water rates or other charges on its customers. This would have meant increasing water rates and land charges by about 11.6%. Westlands decided not to do so because management, including Birmingham and Ciapponi, wanted to minimize the costs on Westlands' customers. Instead, Westlands decided to reclassify certain assets as revenue. Ciapponi instructed Westlands staff to meet with Westlands' independent auditor to discuss this potential alternative to raising water rates. A memo prepared by Westlands employees and sent to Westlands' auditor in November 2009 described the proposal to "reclassify cash reserves or retained earnings" to record additional revenue "in lieu of collecting current revenue while maintaining the required debt coverage ratio." Westlands staff met with the auditor in January 2010. The auditor informed the Westlands staff that he believed the suggested transactions were permissible and subsequently issued an unqualified opinion on Westlands' 2010 audited financial statements. The auditor was not asked whether, or how, disclosure of the transactions should be made in the Official Statement. These reclassification transactions would not increase cash collections and were merely accounting transactions done for the sole purpose of maintaining the ratio.

13. Westlands staff, through Birmingham, as General Manager/General Counsel, and Ciapponi, as Assistant General Manager, presented a memorandum to Westlands' Finance and Administration Committee describing the various accounting transactions that were proposed to achieve a 1.25 debt service coverage ratio. The Finance and Administration Committee decided, based on the recommendation of staff, including Birmingham and Ciapponi, to recommend to the Westlands Board that it approve the reclassification transaction in lieu of increasing rates and charges that would be offset by credits. Subsequently, the Westlands Board approved the Finance and Administration Committee's recommendation.



14. Some of the reclassified assets came from “payable” accounts consisting of amounts that were collected from customers in previous periods but for which revenue was never recorded in the financial statements. The original intent of these accounts was to collect and retain funds to be used for the payment of certain expenses of Westlands and USBR. In the event the funds were not needed in the current fiscal year, they were retained by Westlands until they were needed for the stated purpose or otherwise dispensed at the direction of Westlands’ Board. Westlands decided to reclassify \$8.3 million from these accounts to revenue for 2010. Westlands had never previously reclassified funds from these accounts in a similar manner.

15. In addition, Westlands decided to record \$1.46 million of revenue in 2010 by means of a “return of equity” to landowners in the district. The “equity” came from a reserve fund originally established to ensure debt service payments in future years, related to a 1999 debt issue and had been funded through a rate component of customer charges collected between 1999 and 2002. Together, the two sets of transactions would result in \$9.8 million in additional revenue being recorded, solely to meet the debt service ratio covenant. Without the transactions, Westlands would have reported a debt service coverage ratio of .63.

16. At the public Board meeting at which the transactions were discussed, Birmingham and Ciapponi recommended that the Board approve the transactions. They told the Board that Westlands needed additional revenue to achieve a 1.25 debt ratio and the Board could either increase rates and charges or approve the transactions. When one Board member, who was also a Westlands customer, began to question whether rates and charges in an area in which he owned land would be raised as a result of having to meet the covenant, Birmingham joked that they were engaging in “a little Enron accounting.” Birmingham went on to state: “We’re not collecting any more money from the rate payers, nor are we paying any more money than we would otherwise pay under that the . . . um . . . to pay off the debt. All we’re doing is we’re taking money and saying we are reclassifying it from an account payable to income. And I’m told by Mr. Ciapponi that that satisfies – and he’s vetted it – that that satisfies our debt coverage with the bonds.”

17. The Board voted to approve the transactions, which were recorded as part of the year end closing process for fiscal year 2010. Other than customers who were present at the Board meeting, Westlands’ customers were not made aware that their “equity” had been returned to them. The benefit of these transactions to Westlands and its customers was twofold. First, Westlands avoided reporting a debt service coverage ratio of 0.63 for 2010 and any potential negative consequences associated with failing to meet its covenant under prior bond issuances. Second, Westlands was able to meet the debt service coverage ratio without raising its customers’ water rates.

#### The 2012 Prior Period Adjustment

18. Two years later, and separate from the transactions described above, Westlands changed the way it accounted for advance operations and maintenance payments made to the USBR in 2010 and 2011, classifying them as expenses instead of their original capitalization. Had these expenses been recorded in 2010, Westlands debt service coverage ratio would have been even lower unless Westlands had raised rates and land charges or lowered expenses in

2010. In 2012, when it changed the method by which it accounted for these payments, Westlands recorded a prior period adjustment for the fiscal year 2010 expenses, but in accordance with Generally Accepted Accounting Principles did not restate net revenue for that year. If the payments initially had been recorded as expenses in 2010, net revenue would have decreased and Westlands' debt service coverage ratio for 2010 would have been 0.73 rather than 1.25 (excluding the impact of the 2010 accounting transactions described above).

19. Westlands disclosed this prior period adjustment in a note to its audited financial statements for fiscal year 2012, which were appended to the Official Statement for the 2012 Bonds. However, Westlands did not correct the coverage ratios reported in the Historic Operating Results table for 2010 to account for the adjustment.

20. Westlands did not consider in 2012 whether the debt service coverage ratio reported for 2010 should have been revised as a result of the prior period adjustment. Ciapponi understood that, if the payments made to the USBR in 2010 had been treated in 2010 as an expense, the net revenue for that year would have been reduced, but he did not consider whether it would have affected the 2010 debt service ratio. Similarly, Birmingham was aware of the adjustment but he did not consider its effect on the 2010 debt service ratio.

The Official Statement for the 2012 Bonds Contained False and  
Misleading Statements Concerning the 2010 Debt Service Coverage Ratio

21. The Official Statement for the 2012 Bonds was false and misleading because it represented that Westlands' debt service coverage ratio for 2010 was 1.25 and, therefore, that Westland had complied with its covenants to fix water rates at levels reasonably expected to yield a debt service coverage ratio of 1.25. Westlands did not disclose that the ratio was met only because of the extraordinary transactions undertaken in 2010 to create additional purported revenue, nor did it disclose the effect the 2012 prior period adjustment would have had on the debt service coverage ratio for 2010. Had Westlands disclosed in the Official Statement the combined effect of both the 2010 transactions and the 2012 prior period adjustment, it would have reported its debt service coverage ratio for 2010 as 0.11—less than 10% of what was required. In addition, the failure to disclose the nature of the 2010 and 2012 transactions in the Official Statement masked the fact that Westlands had experienced a significant drop in net revenue in 2010.

22. The dramatic drop in Westlands' 2010 net revenue, its negative effect on the debt service coverage ratio for that year, and the effect of the 2012 prior period adjustment on the 2010 debt service coverage ratio, would have been material to investors in the 2012 Bonds.

Birmingham and Ciapponi Certified the Accuracy of the  
Official Statement on Behalf of Westlands

23. Both Birmingham and Ciapponi were involved in the issuance of the 2012 Bonds and the Official Statement. On behalf of Westlands, both Birmingham and Ciapponi signed the 2012 Bond Purchase Contract with the underwriter. As part of that contract, they certified to the underwriter that the Preliminary Official Statement and the Official Statement "contain no

misstatement of any material fact and do not omit any statement necessary to make the statements contained therein, in light of the circumstances in which such statements were made, not misleading.” Birmingham also made a similar representation in the Closing Certificate he signed on behalf of Westlands.

24. Birmingham received drafts of the Official Statement for the 2012 Bonds. He was aware of the extraordinary 2010 transactions Westlands used to record revenue solely to achieve a 1.25 debt service coverage ratio without raising rates or other charges, but did not take any steps to disclose their effect on the 2010 debt service coverage ratio reported in the Official Statement. Similarly, despite being aware that the 2012 prior period adjustment affected Westland’s net revenue for 2010, Birmingham did not consider whether the 2010 debt service coverage ratio reported in the Official Statement should have been revised.

25. Ciapponi reviewed each draft of the Official Statement as well as the final version. He was aware of the extraordinary 2010 transactions Westlands used to record revenue in order to meet the debt service coverage ratio, but did not take any steps to disclose their effect on the 2010 debt service coverage ratio which was reported in the Official Statement. Similarly, despite being aware that the 2012 prior period adjustment affected Westland’s net revenue for 2010, he did not consider whether the 2010 debt service coverage ratio reported in the Official Statement should have been revised.

### Legal Discussion

#### Respondents’ Violations

26. Section 17(a)(2) of the Securities Act makes it unlawful “in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.” 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2) and no finding of scienter is required. See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). The Commission has held that the “knew or should have known” standard is appropriate to establish negligence. See KPMG, LLP v. SEC, 289 F.3d 109, 120 (D.C. Cir. 2002). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

27. The Commission may institute cease-and-desist proceedings against any person held to be a cause of violations of the federal securities laws due to acts or omissions such person knew or should have known would contribute to the violation. See Valicenti Advisory Servs., Inc., Inv. Advisors Act Rel. No. 1774, 1998 SEC LEXIS 2497, at \*16, n.11 (Nov. 18, 1998), 53 S.E.C. 1033, 1040 n.11 (Nov. 18, 1998), aff’d, Valicenti Advisory Servs., Inc. v. SEC, 198 F.3d 62 (2d Cir. 1999). Negligence is sufficient to establish a violation for causing the primary violation. See KPMG Peat Marwick L.L.P., Exchange Act Rel. No. 43862, 2001 SEC LEXIS 98, at \*102 (Jan. 19, 2001), 54 S.E.C. 1135, 1185, aff’d, 289 F.3d 109 (D.C. Cir. 2002).

28. Birmingham and Ciapponi each knew, or should have known, that Westlands' revenue and debt service coverage ratio for 2010 as reported in the Official Statement for the 2012 Bonds were misrepresented as a result of the extraordinary transactions recorded in 2010. They were also negligent for failing to consider the effect of the 2012 prior period adjustment on the revenue and the debt service coverage ratio calculation that was reported in the Official Statement for the 2012 Bonds. The negligent conduct of Birmingham and Ciapponi is imputed to Westlands.

29. As a result of the conduct described herein, Westlands violated Section 17(a)(2) of the Securities Act and Birmingham and Ciapponi caused Westlands' violations.

#### **Cooperation and Remedial Efforts**

30. In determining to accept Respondents' offers, the Commission considered the Respondents' cooperation and prompt remedial actions, including the development of written financial disclosures policies, and staff training related to Westlands' debt offerings.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Within ten (10) days of the entry of this Order, Westlands shall pay a civil money penalty in the amount of \$125,000 and Birmingham shall pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Ciapponi shall pay a civil money penalty in the amount of \$20,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made by Ciapponi in the following installments: \$10,000 due ten (10) days from the date of the Order, and \$10,000 due twelve (12) months from the date of the Order. If any payment from Ciapponi is not made by the date the payment is required by this Order, the entire outstanding balance of his civil penalty, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment by the Respondents must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Westlands, Birmingham, or Ciapponi, respectively, as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S. C. §523, that the findings in the Order are true and admitted by Respondents Birmingham and Ciapponi, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Birmingham and Ciapponi under the Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents Birmingham and Ciapponi of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

A handwritten signature in black ink, appearing to read "Brent J. Fields", written in a cursive style.

Brent J. Fields  
Secretary

### Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), on the Respondents and their legal agents.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray  
Chief Administrative Law Judge  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-2557

Brian P. Knight, Esq.  
San Francisco Regional Office  
Securities and Exchange Commission  
44 Montgomery St, Suite 2800  
San Francisco, CA 94104

Westlands Water District  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625

Mr. Thomas W. Birmingham  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625

Mr. Louie David Ciapponi  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625

Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625  
(Counsel for Westlands Water District, Thomas W. Birmingham, and Louie David  
Ciapponi)



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

1090  
OFFICIAL BUSINESS



7013 2630 0002 2620 2006

Mr. Thomas W. Birmingham  
c/o Kenneth P. Herzinger, Esq.  
Orrick, Herrington & Sutcliffe LLP  
The Orrick Building  
405 Howard Street  
San Francisco, CA 94105-2625



3- 17162

RECEIVED ON 3/8/16  
MAR 14 2016  
MAILROOM

CERTIFIED

NO. 8049049

MAIL

RETURN RECEIPT REQUESTED

941052625 0003





**BETTY T. YEE**  
**California State Controller**  
Division of Accounting and Reporting

June 1, 2016

District Fiscal Officer  
Westlands Water District  
3130 N. Fresno Street  
P.O. Box 6056  
Fresno, CA 93703-6056

**SUBJECT: 2015-16 Special Districts Financial Transactions Report**

Dear District Fiscal Officer:

This letter provides information regarding the 2015-16 Special Districts Financial Transactions Report (FTR). Government Code (GC) section 53891 was amended and now requires the financial transactions of each local agency to be submitted to the State Controller's Office (SCO) within seven months after the close of the fiscal year. The report shall contain underlying data from audited financial statements prepared in accordance with generally accepted accounting principles, if this data is available.

**The financial reports are due September 28, 2016.** Please submit the following documents:

- Financial Transactions Report
- U.S. Bureau of Census survey form

Please visit [www.sco.ca.gov/ard\\_locinstr\\_districts\\_forms.html](http://www.sco.ca.gov/ard_locinstr_districts_forms.html) for the electronic reporting program, as well as paper reporting forms, instructions, and information. Special District Reporting Unit staff is available if you need assistance with downloading the electronic program.

If filing electronically, your username and password for the electronic reporting program are as follows:

**Username:** Westlands Water District

**Password:** 12411012500

District Fiscal Officer  
June 1, 2016  
Page 2

Please use the following file transfer protocol (FTP) address for submitting electronically:

**FTP Address:** ftp://sco01lgrs:BlackPen48!@ftp.sco.ca.gov

**Top 250 Special Districts**

GC section 12463.1(c) requires the SCO to annually publish specific information regarding the assets, liabilities, and equities from the 250 Special Districts with the largest total revenues.

Your agency has been identified as a potential Special District that may meet the criteria for the 2015-16 report. You are required to complete the following forms:

- Consolidated Balance Sheet – Assets
- Consolidated Balance Sheet – Liabilities and Equity

The addition of GC section 12463.2 (Chapter 781, Statutes of 2014) requires local government agencies (counties, cities, and special districts) to report information relating to the imposition of each locally assessed parcel tax on the SCO annual FTR. Please visit [http://www.sco.ca.gov/ard\\_locinstr\\_ParcelTaxRequirements\\_forms.html](http://www.sco.ca.gov/ard_locinstr_ParcelTaxRequirements_forms.html) for more information regarding the reporting of parcel taxes.

Please note that in accordance with GC section 12464, if the reports are not made in the time, form, and manner required or there is reason to believe that a report is false, incomplete, or incorrect, the SCO is authorized to make an investigation to obtain the information required. Any costs incurred by the SCO shall be borne by the district.

GC section 26909 requires that an audit be completed and filed with our office within 12 months after the close of the fiscal year(s) under examination. As an alternative to mailing a hardcopy, you may submit a softcopy by e-mail to [RDA-SDsupport@sco.ca.gov](mailto:RDA-SDsupport@sco.ca.gov).

If you have any questions or need assistance with downloading the electronic program, please contact the Special Districts Reporting Unit by email at [RDA-SDsupport@sco.ca.gov](mailto:RDA-SDsupport@sco.ca.gov) or by telephone at (916) 327-1017, or contact Tatyana Bychkov by email at [tbychkov@sco.ca.gov](mailto:tbychkov@sco.ca.gov) or by telephone at (916) 322-7739.

Sincerely,



RENEE HSZIEH, Manager  
Local Government Reporting Section

Enclosures

## Top Ten Reporting Issues for Special Districts Financial Transactions Report

Major variances require **FOOTNOTES**. If there is an overall reporting change, add an explanation in the Comments form. The footnote panel can be accessed by double-clicking on the field in which the balance was reported.

1. Invalid footnotes will be questioned. Simply noting "Correct," "Confirmed OK," or "increase/decrease" is not acceptable. Please indicate what caused the variance (e.g., "New AB 1234 law enforcement grant")
2. All **DEBT** reported must have Principal and Interest (P&I) payments or, if none, footnotes to explain why there are no current year payments.
  - Long-Term Debt
    - *Principal Amount Issued During Fiscal Year*
      - Report the total amount of principal **issued** during the fiscal year on the Long-Term Debt form.
      - Use a separate form for each debt issued.
      - For **Non-Enterprise Activities**, the principal amount issued must also be reflected on the Non-Enterprise Activity's Revenues, Expenditures, Sources and Uses form on the Proceeds of Long-Term Debt line.
    - *Principal Amount Matured During Fiscal Year*
      - Report the amount of principal **paid** during the fiscal year on the Long-Term Debt form. Do **not** include the current portion of principal amounts that are payable in the following fiscal year or the interest payment during the fiscal year.
      - For **Non-Enterprise Activities**, the principal payments reported must also be reflected on the Non-Enterprise Activity's Revenues, Expenditures, Sources and Uses form on the Retirement of Long-Term Debt line.
    - *Interest Payment During the Fiscal Year*
      - Report interest payments on the Interest on Long-Term Debt line on the Revenues, Expenditures, Sources and Uses form of the non-enterprise or enterprise activity that relates to the debt.
  - Other Long-Term Debt
    - Do not include liability type debts that have no P&I payments [e.g., Compensated Absences and Other Post-Employment Benefits (OPEB)] or interfund loans (e.g., copiers, vehicles, etc.) on the Long-Term Debt form as Other long term indebtedness.
3. Include a footnote to explain the reason for a **PRIOR PERIOD ADJUSTMENT** exceeding 20% of the Fund Equity, Beginning of Period.
4. The **ACTIVITY TYPE** must reflect the services the Special District provides. Select the type of non-enterprise/enterprise activity for which this report is being prepared. If preparing a paper report, select the appropriate non-enterprise activity from the list on page 12 of the Special District Reporting Instructions.

If the Special District has any debt reported on the debt forms, the activity reported on the debt form must match the activity on the non-enterprise/enterprise form (e.g., Fire Protection activity reported on the non-enterprise form must have Fire Protection selected as the activity type on the debt form).

5. The **OTHER** fields on the revenue and expenditure forms are for items that do not apply to a hard-coded field elsewhere on the form. Please review all of the fields on the forms before reporting an item as “other,” and provide a footnote.
6. **SPECIAL ASSESSMENT, MELLO-ROOS AND MARK-ROOS BONDS**
  - Do not include interest or principal payments for 1911 Act Bonds, 1915 Act Bonds on the Revenues, Expenditures, Sources and Uses form. Report transactions and balances relating to these bonds on the Special Assessments, Mello-Roos Long-Term Debt form only.
  - Report assessments made for the payoff of bonds related to the Mello-Roos and Mark-Roos Bond Acts on the Special Assessments line on the Revenues, Expenses and Changes in Fund Equity form.
7. Report **RESIDUAL EQUITY TRANSFERS** for non-recurring or non-routine transfers of equity to **other agencies** only, for example, transfers of residual balances of a dissolved district which was assumed by a new city. Include a footnote to explain why a transfer was made. Report transfers between funds within the agency as Operating Transfer In/Out on the Revenues, Expenditures, Sources and Uses form.
8. The **APPROPRIATIONS LIMIT INFORMATION** form must be completed by all special districts that receive property taxes and are subject to the provisions of California Constitutional Article XIII B. Refer to California Constitutional Article XIII B for specific information on this requirement. If the Special District is exempt from having an appropriation, note so in the General Comment form. Please note that failure to report your Appropriations Limit might affect your mandated cost reimbursement.
9. A Special District that has **NO FINANCIAL TRANSACTIONS** during the year must file the Cover Page form and the General Information form of the Special Districts Financial Transactions Report, stating “No Activity” on the Cover Page form. A Special District that has no financial transactions but has **outstanding debt** taken out in the Special District’s name, must report the debt and any debt payments on the Long-Term Debt and Revenues, Expenses, and Changes in Fund Equity forms.
10. **RUNNING A LITTLE BEHIND?** We cannot grant extensions. You may submit your **REPORT** via file transfer protocol (FTP). If you are unable to submit your report via FTP, please contact the Special Districts Reporting Unit by email at [RDA-SDsupport@sco.ca.gov](mailto:RDA-SDsupport@sco.ca.gov) or by telephone at (916) 327 1017 for other options. You must submit the signed Cover Page and the Bureau of Census form by mail.

## Supplement to the Annual Report of Special Districts

<b>Special District ID Number:</b>	
<b>Name of District:</b>	

Mark the appropriate box below to indicate the ending date of your agency's fiscal year.  
Report data for that period only.

- |   |  |  |                                     |
|---|--|--|-------------------------------------|
| <input type="checkbox"/> July 2015      | <input type="checkbox"/> October 2015  | <input type="checkbox"/> January 2016  | <input type="checkbox"/> April 2016 |
| <input type="checkbox"/> August 2015    | <input type="checkbox"/> December 2015 | <input type="checkbox"/> February 2016 | <input type="checkbox"/> May 2016   |
| <input type="checkbox"/> September 2015 |  | <input type="checkbox"/> March 2016    | <input type="checkbox"/> June 2016  |

Return this form to the **California State Controller's Office**. If you have any questions regarding this form please contact:

*U.S. Bureau of the Census, Michael Osman, 1-800-242-4523*

### A. Personnel Expenditures

Please report your government's total expenditures for salaries and wages during the year, including amounts paid on force account construction projects.

<b>Z00:</b>	\$
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### B. Capital Outlay Expenditures for Enterprise Activities

Please report your government's capital outlay expenditures for the following enterprise activities, if applicable:

Airport Enterprise	Amount
Land and Equipment (Census Code G01)	\$
Construction (Census Code F01)	\$

Electric Enterprise	Amount
Land and Equipment (Census Code G92)	\$
Construction (Census Code F92)	\$

Harbor and Port Enterprise	Amount
Land and Equipment (Census Code G87)	\$
Construction (Census Code F87)	\$

Hospital Enterprise	Amount
Land and Equipment (Census Code G36)	\$
Construction (Census Code F36)	\$

<b>Waste Disposal Enterprise</b>	<b>Amount</b>
Land and Equipment (Census Code G80)	\$
Construction (Census Code F80)	\$

<b>Water Enterprise</b>	<b>Amount</b>
Land and Equipment (Census Code G91)	\$
Construction (Census Code F91)	\$

U.S. Bureau of the Census – Revised 6/2009

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 10053 / March 9, 2016**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3752 / March 9, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17162**

**In the Matter of**

**WESTLANDS WATER  
DISTRICT, THOMAS W.  
BIRMINGHAM, and  
LOUIE DAVID CIAPPONI**

**Respondents.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933, MAKING FINDINGS, AND  
IMPOSING A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), against Westlands Water District (“Westlands”), Thomas W. Birmingham, and Louie David Ciapponi (collectively “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.



### III.

On the basis of this Order and Respondents' Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. This matter involves misrepresentations and omissions by Westlands in the Official Statement for its October 2012 offering of \$77 million in Refunding Revenue Bonds, Series 2012A (the "2012 Bonds"). The Official Statement for the 2012 Bonds was misleading in its treatment of one key metric for Fiscal Year 2010: Westlands' debt service coverage ratio. The debt service coverage ratio is important to investors because it signals whether an issuer has sufficient ability to meet its debt service obligations. In prior bond offerings, Westlands had covenanted to fix and collect water rates at least sufficient to generate net revenues equal to at least 125% of its debt service payments for that year. Failure by Westlands to meet that 1.25 debt service coverage ratio could be a technical default on its bonds which could lead to undesirable outcomes, including higher interest rates on future bonds, ratings downgrades, and an inability to sell bonds in the following fiscal year.

2. The Official Statement for the 2012 Bonds contained a table representing that Westlands had met or exceeded the required debt service coverage ratio for each of the prior five years.<sup>2</sup> For fiscal year 2010, however, the revenue and coverage ratio reported in the table were misleading because Westlands failed to disclose: (1) that it had engaged in extraordinary accounting transactions in 2010 *solely* to recognize additional revenue for purposes of calculating the debt service coverage ratio without raising rates on customers, and (2) the impact of a 2012 prior period adjustment to account for expenses that would have decreased revenue in 2010 and negatively affected the ratio.

3. In the latter half of fiscal year 2010, Westlands staff informed Birmingham and Ciapponi that, because of reductions in water supply, Westlands would not generate sufficient revenue to achieve a 1.25 debt service coverage ratio. At Ciapponi's direction, Westlands staff consulted with its independent auditor about accounting transactions that could be implemented to avoid raising water rates in order to meet a 1.25 debt service coverage ratio. Subsequently, Westlands staff, including Birmingham and Ciapponi, advised Westlands' Finance and Administration Committee that it recommend to Westlands' Board of Directors (the "Board") to approve two accounting transactions to recognize additional revenue. These transactions and their effect on revenue and the debt service coverage ratio were not disclosed in the Official Statement for the 2012 Bonds. Separately, in 2012, Westlands adjusted the accounting for certain expenses. Had these expenses been recorded in 2010, the 2010 debt service coverage ratio would have been negatively affected. While this prior period adjustment was disclosed in the Official Statement for the 2012 Bonds, its impact on the 2010 debt service coverage ratio was not disclosed. If the effect of the 2010 and 2012 accounting transactions on the debt service

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

<sup>2</sup> Westland's fiscal year ends on February 28. Unless otherwise specified in this Order, references to specific years are to fiscal years.

coverage ratio had been disclosed, Westlands' coverage ratio for 2010 would have been 0.11, rather than the 1.25 which was reported in the Official Statement.

4. As a result of the conduct described herein, Westlands violated Section 17(a)(2) of the Securities Act and Birmingham and Ciapponi caused Westlands' violation.

### **Respondents**

5. **Westlands Water District** is headquartered in Fresno, California and is the largest agricultural water district in California. Westlands is a public agency of the State of California, originally formed in 1952 for the primary purpose of providing irrigation water to customers within the district. Its customers are approximately 700 agricultural land owners and water users and approximately 200 municipal and industrial land owners and water users. Westlands' Board is elected by land owners in the district, and as a result, Westlands is managed by representatives of its customers. For 2014, Westlands had operating revenues in excess of \$120 million.

6. **Thomas W. Birmingham**, age 60, of Sacramento, California, has served as the General Manager of Westlands, the highest executive level position, from October 2000 through the present. He is a member of the State Bar of California and also served as Westlands' General Counsel through May 2010 and was reappointed General Counsel in September 2015.

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#### **Westlands' Rate Covenant**

8. In most years, Westlands purchases the majority of the water it sells to its customers from the United States Bureau of Reclamation ("USBR") and is required to pay a share of USBR's capital costs and operations and maintenance expenses. In drought years such as 2010, the USBR often reduces the quantity of water it makes available to Westlands, forcing Westlands to purchase water from other, more expensive, sources. Westlands charges its customers for the cost of water it sells and collects additional fees both for its own operational expenses and the share of the USBR expenses it pays.

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bonds. Westlands has significant incentive to maintain the 1.25 ratio because a failure to do so could preclude Westlands from issuing bonds in the following fiscal year. Failure to maintain the ratio could also result in higher borrowing costs in future debt offerings and could negatively affect Westlands' debt ratings.

10. The Official Statement for the 2012 Bonds included a table reporting the debt service coverage ratio for fiscal years 2008 through 2012. The table contains, among other operating data, columns showing five years of summary income statement information and the ratio for each year, derived from Westlands' audited financial statements, which reflects that Westlands maintained a debt service ratio of exactly 1.25 for 2010. The bond sale transaction closed on October 25, 2012.

Extraordinary Accounting Transactions in Fiscal Year 2010 to  
Increase the Debt Service Coverage Ratio

11. In October 2009, Ciapponi learned that the projected full year revenue for fiscal year 2010 would be approximately \$10 million short of what was required to maintain the 1.25 debt service coverage ratio. Westlands' fiscal year ends February 28, so it had very little time to rectify the revenue shortfall for fiscal year 2010 in order to maintain the 1.25 ratio for that year.

12. In order to meet the ratio, Westlands could have collected additional revenue by raising the water rates or other charges on its customers. This would have meant increasing water rates and land charges by about 11.6%. Westlands decided not to do so because management, including Birmingham and Ciapponi, wanted to minimize the costs on Westlands' customers. Instead, Westlands decided to reclassify certain assets as revenue. Ciapponi instructed Westlands staff to meet with Westlands' independent auditor to discuss this potential alternative to raising water rates. A memo prepared by Westlands employees and sent to Westlands' auditor in November 2009 described the proposal to "reclassify cash reserves or retained earnings" to record additional revenue "in lieu of collecting current revenue while maintaining the required debt coverage ratio." Westlands staff met with the auditor in January 2010. The auditor informed the Westlands staff that he believed the suggested transactions were permissible and subsequently issued an unqualified opinion on Westlands' 2010 audited financial statements. The auditor was not asked whether, or how, disclosure of the transactions should be made in the Official Statement. These reclassification transactions would not increase cash collections and were merely accounting transactions done for the sole purpose of maintaining the ratio.

13. Westlands staff, through Birmingham, as General Manager/General Counsel, and Ciapponi, as Assistant General Manager, presented a memorandum to Westlands' Finance and Administration Committee describing the various accounting transactions that were proposed to achieve a 1.25 debt service coverage ratio. The Finance and Administration Committee decided, based on the recommendation of staff, including Birmingham and Ciapponi, to recommend to the Westlands Board that it approve the reclassification transaction in lieu of increasing rates and charges that would be offset by credits. Subsequently, the Westlands Board approved the Finance and Administration Committee's recommendation.

14. Some of the reclassified assets came from “payable” accounts consisting of amounts that were collected from customers in previous periods but for which revenue was never recorded in the financial statements. The original intent of these accounts was to collect and retain funds to be used for the payment of certain expenses of Westlands and USBR. In the event the funds were not needed in the current fiscal year, they were retained by Westlands until they were needed for the stated purpose or otherwise dispensed at the direction of Westlands’ Board. Westlands decided to reclassify \$8.3 million from these accounts to revenue for 2010. Westlands had never previously reclassified funds from these accounts in a similar manner.

15. In addition, Westlands decided to record \$1.46 million of revenue in 2010 by means of a “return of equity” to landowners in the district. The “equity” came from a reserve fund originally established to ensure debt service payments in future years, related to a 1999 debt issue and had been funded through a rate component of customer charges collected between 1999 and 2002. Together, the two sets of transactions would result in \$9.8 million in additional revenue being recorded, solely to meet the debt service ratio covenant. Without the transactions, Westlands would have reported a debt service coverage ratio of .63.

16. At the public Board meeting at which the transactions were discussed, Birmingham and Ciapponi recommended that the Board approve the transactions. They told the Board that Westlands needed additional revenue to achieve a 1.25 debt ratio and the Board could either increase rates and charges or approve the transactions. When one Board member, who was also a Westlands customer, began to question whether rates and charges in an area in which he owned land would be raised as a result of having to meet the covenant, Birmingham joked that they were engaging in “a little Enron accounting.” Birmingham went on to state: “We’re not collecting any more money from the rate payers, nor are we paying any more money than we would otherwise pay under that the . . . um . . . to pay off the debt. All we’re doing is we’re taking money and saying we are reclassifying it from an account payable to income. And I’m told by Mr. Ciapponi that that satisfies – and he’s vetted it – that that satisfies our debt coverage with the bonds.”

17. The Board voted to approve the transactions, which were recorded as part of the year end closing process for fiscal year 2010. Other than customers who were present at the Board meeting, Westlands’ customers were not made aware that their “equity” had been returned to them. The benefit of these transactions to Westlands and its customers was twofold. First, Westlands avoided reporting a debt service coverage ratio of 0.63 for 2010 and any potential negative consequences associated with failing to meet its covenant under prior bond issuances. Second, Westlands was able to meet the debt service coverage ratio without raising its customers’ water rates.

#### The 2012 Prior Period Adjustment

18. Two years later, and separate from the transactions described above, Westlands changed the way it accounted for advance operations and maintenance payments made to the USBR in 2010 and 2011, classifying them as expenses instead of their original capitalization. Had these expenses been recorded in 2010, Westlands debt service coverage ratio would have been even lower unless Westlands had raised rates and land charges or lowered expenses in

2010. In 2012, when it changed the method by which it accounted for these payments, Westlands recorded a prior period adjustment for the fiscal year 2010 expenses, but in accordance with Generally Accepted Accounting Principles did not restate net revenue for that year. If the payments initially had been recorded as expenses in 2010, net revenue would have decreased and Westlands' debt service coverage ratio for 2010 would have been 0.73 rather than 1.25 (excluding the impact of the 2010 accounting transactions described above).

19. Westlands disclosed this prior period adjustment in a note to its audited financial statements for fiscal year 2012, which were appended to the Official Statement for the 2012 Bonds. However, Westlands did not correct the coverage ratios reported in the Historic Operating Results table for 2010 to account for the adjustment.

20. Westlands did not consider in 2012 whether the debt service coverage ratio reported for 2010 should have been revised as a result of the prior period adjustment. Ciapponi understood that, if the payments made to the USBR in 2010 had been treated in 2010 as an expense, the net revenue for that year would have been reduced, but he did not consider whether it would have affected the 2010 debt service ratio. Similarly, Birmingham was aware of the adjustment but he did not consider its effect on the 2010 debt service ratio.

The Official Statement for the 2012 Bonds Contained False and Misleading Statements Concerning the 2010 Debt Service Coverage Ratio

21. The Official Statement for the 2012 Bonds was false and misleading because it represented that Westlands' debt service coverage ratio for 2010 was 1.25 and, therefore, that Westland had complied with its covenants to fix water rates at levels reasonably expected to yield a debt service coverage ratio of 1.25. Westlands did not disclose that the ratio was met only because of the extraordinary transactions undertaken in 2010 to create additional purported revenue, nor did it disclose the effect the 2012 prior period adjustment would have had on the debt service coverage ratio for 2010. Had Westlands disclosed in the Official Statement the combined effect of both the 2010 transactions and the 2012 prior period adjustment, it would have reported its debt service coverage ratio for 2010 as 0.11— less than 10% of what was required. In addition, the failure to disclose the nature of the 2010 and 2012 transactions in the Official Statement masked the fact that Westlands had experienced a significant drop in net revenue in 2010.

22. The dramatic drop in Westlands' 2010 net revenue, its negative effect on the debt service coverage ratio for that year, and the effect of the 2012 prior period adjustment on the 2010 debt service coverage ratio, would have been material to investors in the 2012 Bonds.

Birmingham and Ciapponi Certified the Accuracy of the Official Statement on Behalf of Westlands

23. Both Birmingham and Ciapponi were involved in the issuance of the 2012 Bonds and the Official Statement. On behalf of Westlands, both Birmingham and Ciapponi signed the 2012 Bond Purchase Contract with the underwriter. As part of that contract, they certified to the underwriter that the Preliminary Official Statement and the Official Statement "contain no

misstatement of any material fact and do not omit any statement necessary to make the statements contained therein, in light of the circumstances in which such statements were made, not misleading.” Birmingham also made a similar representation in the Closing Certificate he signed on behalf of Westlands.

24. Birmingham received drafts of the Official Statement for the 2012 Bonds. He was aware of the extraordinary 2010 transactions Westlands used to record revenue solely to achieve a 1.25 debt service coverage ratio without raising rates or other charges, but did not take any steps to disclose their effect on the 2010 debt service coverage ratio reported in the Official Statement. Similarly, despite being aware that the 2012 prior period adjustment affected Westland’s net revenue for 2010, Birmingham did not consider whether the 2010 debt service coverage ratio reported in the Official Statement should have been revised.

25. Ciapponi reviewed each draft of the Official Statement as well as the final version. He was aware of the extraordinary 2010 transactions Westlands used to record revenue in order to meet the debt service coverage ratio, but did not take any steps to disclose their effect on the 2010 debt service coverage ratio which was reported in the Official Statement. Similarly, despite being aware that the 2012 prior period adjustment affected Westland’s net revenue for 2010, he did not consider whether the 2010 debt service coverage ratio reported in the Official Statement should have been revised.

## **Legal Discussion**

### **Respondents’ Violations**

26. Section 17(a)(2) of the Securities Act makes it unlawful “in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.” 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2) and no finding of scienter is required. See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). The Commission has held that the “knew or should have known” standard is appropriate to establish negligence. See KPMG, LLP v. SEC, 289 F.3d 109, 120 (D.C. Cir. 2002). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

27. The Commission may institute cease-and-desist proceedings against any person held to be a cause of violations of the federal securities laws due to acts or omissions such person knew or should have known would contribute to the violation. See Valicenti Advisory Servs., Inc., Inv. Advisors Act Rel. No. 1774, 1998 SEC LEXIS 2497, at \*16, n.11 (Nov. 18, 1998), 53 S.E.C. 1033, 1040 n.11 (Nov. 18, 1998), aff’d, Valicenti Advisory Servs., Inc. v. SEC, 198 F.3d 62 (2d Cir. 1999). Negligence is sufficient to establish a violation for causing the primary violation. See KPMG Peat Marwick L.L.P., Exchange Act Rel. No. 43862, 2001 SEC LEXIS 98, at \*102 (Jan. 19, 2001), 54 S.E.C. 1135, 1185, aff’d, 289 F.3d 109 (D.C. Cir. 2002).

28. Birmingham and Ciapponi each knew, or should have known, that Westlands' revenue and debt service coverage ratio for 2010 as reported in the Official Statement for the 2012 Bonds were misrepresented as a result of the extraordinary transactions recorded in 2010. They were also negligent for failing to consider the effect of the 2012 prior period adjustment on the revenue and the debt service coverage ratio calculation that was reported in the Official Statement for the 2012 Bonds. The negligent conduct of Birmingham and Ciapponi is imputed to Westlands.

29. As a result of the conduct described herein, Westlands violated Section 17(a)(2) of the Securities Act and Birmingham and Ciapponi caused Westlands' violations.

### **Cooperation and Remedial Efforts**

30. In determining to accept Respondents' offers, the Commission considered the Respondents' cooperation and prompt remedial actions, including the development of written financial disclosures policies, and staff training related to Westlands' debt offerings.

## **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Within ten (10) days of the entry of this Order, Westlands shall pay a civil money penalty in the amount of \$125,000 and Birmingham shall pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Ciapponi shall pay a civil money penalty in the amount of \$20,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made by Ciapponi in the following installments: \$10,000 due ten (10) days from the date of the Order, and \$10,000 due twelve (12) months from the date of the Order. If any payment from Ciapponi is not made by the date the payment is required by this Order, the entire outstanding balance of his civil penalty, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment by the Respondents must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Westlands, Birmingham, or Ciapponi, respectively, as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.



**V.**

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S. C. §523, that the findings in the Order are true and admitted by Respondents Birmingham and Ciapponi, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Birmingham and Ciapponi under the Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents Birmingham and Ciapponi of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields  
Secretary

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 10053 / March 9, 2016**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 3752 / March 9, 2016**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-17162**

**In the Matter of**

**WESTLANDS WATER  
DISTRICT, THOMAS W.  
BIRMINGHAM, and  
LOUIE DAVID CIAPPONI**

**Respondents.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS PURSUANT TO  
SECTION 8A OF THE SECURITIES ACT  
OF 1933, MAKING FINDINGS, AND  
IMPOSING A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), against Westlands Water District (“Westlands”), Thomas W. Birmingham, and Louie David Ciapponi (collectively “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the “Offers”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondents' Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. This matter involves misrepresentations and omissions by Westlands in the Official Statement for its October 2012 offering of \$77 million in Refunding Revenue Bonds, Series 2012A (the "2012 Bonds"). The Official Statement for the 2012 Bonds was misleading in its treatment of one key metric for Fiscal Year 2010: Westlands' debt service coverage ratio. The debt service coverage ratio is important to investors because it signals whether an issuer has sufficient ability to meet its debt service obligations. In prior bond offerings, Westlands had covenanted to fix and collect water rates at least sufficient to generate net revenues equal to at least 125% of its debt service payments for that year. Failure by Westlands to meet that 1.25 debt service coverage ratio could be a technical default on its bonds which could lead to undesirable outcomes, including higher interest rates on future bonds, ratings downgrades, and an inability to sell bonds in the following fiscal year.

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14. Some of the reclassified assets came from “payable” accounts consisting of amounts that were collected from customers in previous periods but for which revenue was never recorded in the financial statements. The original intent of these accounts was to collect and retain funds to be used for the payment of certain expenses of Westlands and USBR. In the event the funds were not needed in the current fiscal year, they were retained by Westlands until they were needed for the stated purpose or otherwise dispensed at the direction of Westlands’ Board. Westlands decided to reclassify \$8.3 million from these accounts to revenue for 2010. Westlands had never previously reclassified funds from these accounts in a similar manner.

15. In addition, Westlands decided to record \$1.46 million of revenue in 2010 by means of a “return of equity” to landowners in the district. The “equity” came from a reserve fund originally established to ensure debt service payments in future years, related to a 1999 debt issue and had been funded through a rate component of customer charges collected between 1999 and 2002. Together, the two sets of transactions would result in \$9.8 million in additional revenue being recorded, solely to meet the debt service ratio covenant. Without the transactions, Westlands would have reported a debt service coverage ratio of .63.

16. At the public Board meeting at which the transactions were discussed, Birmingham and Ciapponi recommended that the Board approve the transactions. They told the Board that Westlands needed additional revenue to achieve a 1.25 debt ratio and the Board could either increase rates and charges or approve the transactions. When one Board member, who was also a Westlands customer, began to question whether rates and charges in an area in which he owned land would be raised as a result of having to meet the covenant, Birmingham joked that they were engaging in “a little Enron accounting.” Birmingham went on to state: “We’re not collecting any more money from the rate payers, nor are we paying any more money than we would otherwise pay under that the . . . um . . . to pay off the debt. All we’re doing is we’re taking money and saying we are reclassifying it from an account payable to income. And I’m told by Mr. Ciapponi that that satisfies – and he’s vetted it – that that satisfies our debt coverage with the bonds.”

17. The Board voted to approve the transactions, which were recorded as part of the year end closing process for fiscal year 2010. Other than customers who were present at the Board meeting, Westlands’ customers were not made aware that their “equity” had been returned to them. The benefit of these transactions to Westlands and its customers was twofold. First, Westlands avoided reporting a debt service coverage ratio of 0.63 for 2010 and any potential negative consequences associated with failing to meet its covenant under prior bond issuances. Second, Westlands was able to meet the debt service coverage ratio without raising its customers’ water rates.

#### The 2012 Prior Period Adjustment

18. Two years later, and separate from the transactions described above, Westlands changed the way it accounted for advance operations and maintenance payments made to the USBR in 2010 and 2011, classifying them as expenses instead of their original capitalization. Had these expenses been recorded in 2010, Westlands debt service coverage ratio would have been even lower unless Westlands had raised rates and land charges or lowered expenses in

2010. In 2012, when it changed the method by which it accounted for these payments, Westlands recorded a prior period adjustment for the fiscal year 2010 expenses, but in accordance with Generally Accepted Accounting Principles did not restate net revenue for that year. If the payments initially had been recorded as expenses in 2010, net revenue would have decreased and Westlands' debt service coverage ratio for 2010 would have been 0.73 rather than 1.25 (excluding the impact of the 2010 accounting transactions described above).

19. Westlands disclosed this prior period adjustment in a note to its audited financial statements for fiscal year 2012, which were appended to the Official Statement for the 2012 Bonds. However, Westlands did not correct the coverage ratios reported in the Historic Operating Results table for 2010 to account for the adjustment.

20. Westlands did not consider in 2012 whether the debt service coverage ratio reported for 2010 should have been revised as a result of the prior period adjustment. Ciapponi understood that, if the payments made to the USBR in 2010 had been treated in 2010 as an expense, the net revenue for that year would have been reduced, but he did not consider whether it would have affected the 2010 debt service ratio. Similarly, Birmingham was aware of the adjustment but he did not consider its effect on the 2010 debt service ratio.

The Official Statement for the 2012 Bonds Contained False and Misleading Statements Concerning the 2010 Debt Service Coverage Ratio

21. The Official Statement for the 2012 Bonds was false and misleading because it represented that Westlands' debt service coverage ratio for 2010 was 1.25 and, therefore, that Westland had complied with its covenants to fix water rates at levels reasonably expected to yield a debt service coverage ratio of 1.25. Westlands did not disclose that the ratio was met only because of the extraordinary transactions undertaken in 2010 to create additional purported revenue, nor did it disclose the effect the 2012 prior period adjustment would have had on the debt service coverage ratio for 2010. Had Westlands disclosed in the Official Statement the combined effect of both the 2010 transactions and the 2012 prior period adjustment, it would have reported its debt service coverage ratio for 2010 as 0.11— less than 10% of what was required. In addition, the failure to disclose the nature of the 2010 and 2012 transactions in the Official Statement masked the fact that Westlands had experienced a significant drop in net revenue in 2010.

22. The dramatic drop in Westlands' 2010 net revenue, its negative effect on the debt service coverage ratio for that year, and the effect of the 2012 prior period adjustment on the 2010 debt service coverage ratio, would have been material to investors in the 2012 Bonds.

Birmingham and Ciapponi Certified the Accuracy of the Official Statement on Behalf of Westlands

23. Both Birmingham and Ciapponi were involved in the issuance of the 2012 Bonds and the Official Statement. On behalf of Westlands, both Birmingham and Ciapponi signed the 2012 Bond Purchase Contract with the underwriter. As part of that contract, they certified to the underwriter that the Preliminary Official Statement and the Official Statement "contain no

misstatement of any material fact and do not omit any statement necessary to make the statements contained therein, in light of the circumstances in which such statements were made, not misleading.” Birmingham also made a similar representation in the Closing Certificate he signed on behalf of Westlands.

24. Birmingham received drafts of the Official Statement for the 2012 Bonds. He was aware of the extraordinary 2010 transactions Westlands used to record revenue solely to achieve a 1.25 debt service coverage ratio without raising rates or other charges, but did not take any steps to disclose their effect on the 2010 debt service coverage ratio reported in the Official Statement. Similarly, despite being aware that the 2012 prior period adjustment affected Westland’s net revenue for 2010, Birmingham did not consider whether the 2010 debt service coverage ratio reported in the Official Statement should have been revised.

25. Ciapponi reviewed each draft of the Official Statement as well as the final version. He was aware of the extraordinary 2010 transactions Westlands used to record revenue in order to meet the debt service coverage ratio, but did not take any steps to disclose their effect on the 2010 debt service coverage ratio which was reported in the Official Statement. Similarly, despite being aware that the 2012 prior period adjustment affected Westland’s net revenue for 2010, he did not consider whether the 2010 debt service coverage ratio reported in the Official Statement should have been revised.

## **Legal Discussion**

### **Respondents’ Violations**

26. Section 17(a)(2) of the Securities Act makes it unlawful “in the offer or sale of any securities . . . directly or indirectly . . . to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.” 15 U.S.C. § 77q(a)(2) (2012). Negligence is sufficient to establish a violation of Section 17(a)(2) and no finding of scienter is required. See Aaron v. SEC, 446 U.S. 680, 696-97 (1980). The Commission has held that the “knew or should have known” standard is appropriate to establish negligence. See KPMG, LLP v. SEC, 289 F.3d 109, 120 (D.C. Cir. 2002). A misrepresentation or omission is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. See Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988).

27. The Commission may institute cease-and-desist proceedings against any person held to be a cause of violations of the federal securities laws due to acts or omissions such person knew or should have known would contribute to the violation. See Valicenti Advisory Servs., Inc., Inv. Advisors Act Rel. No. 1774, 1998 SEC LEXIS 2497, at \*16, n.11 (Nov. 18, 1998), 53 S.E.C. 1033, 1040 n.11 (Nov. 18, 1998), aff’d, Valicenti Advisory Servs., Inc. v. SEC, 198 F.3d 62 (2d Cir. 1999). Negligence is sufficient to establish a violation for causing the primary violation. See KPMG Peat Marwick L.L.P., Exchange Act Rel. No. 43862, 2001 SEC LEXIS 98, at \*102 (Jan. 19, 2001), 54 S.E.C. 1135, 1185, aff’d, 289 F.3d 109 (D.C. Cir. 2002).



28. Birmingham and Ciapponi each knew, or should have known, that Westlands' revenue and debt service coverage ratio for 2010 as reported in the Official Statement for the 2012 Bonds were misrepresented as a result of the extraordinary transactions recorded in 2010. They were also negligent for failing to consider the effect of the 2012 prior period adjustment on the revenue and the debt service coverage ratio calculation that was reported in the Official Statement for the 2012 Bonds. The negligent conduct of Birmingham and Ciapponi is imputed to Westlands.

29. As a result of the conduct described herein, Westlands violated Section 17(a)(2) of the Securities Act and Birmingham and Ciapponi caused Westlands' violations.

### **Cooperation and Remedial Efforts**

30. In determining to accept Respondents' offers, the Commission considered the Respondents' cooperation and prompt remedial actions, including the development of written financial disclosures policies, and staff training related to Westlands' debt offerings.

## **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, Respondents cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act.

B. Within ten (10) days of the entry of this Order, Westlands shall pay a civil money penalty in the amount of \$125,000 and Birmingham shall pay a civil money penalty in the amount of \$50,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Ciapponi shall pay a civil money penalty in the amount of \$20,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made by Ciapponi in the following installments: \$10,000 due ten (10) days from the date of the Order, and \$10,000 due twelve (12) months from the date of the Order. If any payment from Ciapponi is not made by the date the payment is required by this Order, the entire outstanding balance of his civil penalty, plus any additional interest accrued pursuant to 31 U.S.C. § 3717, shall be due and payable immediately, without further application. Payment by the Respondents must be made in one of the following ways:

- (1) Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

- (2) Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Westlands, Birmingham, or Ciapponi, respectively, as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to LeeAnn Ghazil Gaunt, Chief, Municipal Securities and Public Pensions Unit, Securities and Exchange Commission, 33 Arch Street, 23rd Floor, Boston, MA 02110-1424.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

**V.**

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S. C. §523, that the findings in the Order are true and admitted by Respondents Birmingham and Ciapponi, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondents Birmingham and Ciapponi under the Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondents Birmingham and Ciapponi of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields  
Secretary



**BETTY T. YEE**  
**California State Controller**

February 16, 2017

Thomas W. Birmingham, General Manager  
Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703

Dear Mr. Birmingham:

The State Controller's Office (SCO) performed a limited review of the Westlands Water District's state funding relating to the State Revolving Fund Loan Program – Westlands Water District Irrigation System Improvement Project for the period of March 1, 2013, through February 28, 2015.

The SCO performed this review pursuant to Government Code section 12410 which requires the Controller to "...superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment."

The objective of our review was to evaluate the district's system of internal accounting and administrative controls, relating to state funds, and determine whether the district accounted for and expended its state funds in accordance with Government Code section 12410.

Based on our preliminary analytical procedures performed and inquiries made, nothing came to our attention that identifies concerns related to the use of the State Revolving Fund Loan Program; therefore, we will not conduct further review on the Loan Program at this time. However, a follow-up review might be conducted later.

We did not audit the district's financial statements. We limited our review scope to planning and performing review procedures necessary to obtain limited assurance that the district accounted for and expended its state funds in accordance with Government Code section 12410. Our review is not intended to and does not constitute an audit performed in accordance with applicable grantor's requirements for the above-mentioned state funds. Therefore, this review was not sufficient in detail to express an opinion on the district's compliance with applicable funding provisions for the loans. Accordingly, the SCO does not express such an opinion.

We thank the district staff and management, who were helpful throughout our review process.

Thomas W. Birmingham, General Manager  
February 16, 2017  
Page 2

If you have any questions or require additional information, please contact Efren Loste, Interim Chief, Local Government Audits Bureau, by telephone at (916) 324-7226 or by email at [eloste@sco.ca.gov](mailto:eloste@sco.ca.gov).

Sincerely,



JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/lr

17791

cc: Don Peracchi, Board President  
Westlands Water District  
Bobbie Ormonde, Director of Finance and Administration (via email)  
Westlands Water District  
Efren Loste, Interim Bureau Chief  
Division of Audits  
State Controller's Office



RECEIVED

OCT 24 2016

**BETTY T. YEE**  
California State Controller

October 17, 2016

Thomas W. Birmingham, General Manager  
Westlands Water District  
3130 N. Fresno Street  
Fresno, CA 93703

Dear Mr. Birmingham:

This letter is to confirm, as discussed by telephone on October 14, 2016, between Bobbie Ormonde of your staff and Michael Cheng of our staff, that the State Controller's Office (SCO) will conduct a review of the Westlands Water District's state and federal funding relating to various grants and loans. Our review will include an analysis of the administrative and internal accounting controls and fiscal management of the district. Our review will focus on the period of March 1, 2013, through February 28, 2015; however, if issues come to our attention, we may expand our work to include prior and/or current periods.

The review will be conducted under Government Code section 12410, which requires the Controller to "...superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment."

Additionally, Government Code section 12891.2 grants the Controller the authority to audit the books and records of public agencies receiving loans or grants for local water projects.

To expedite the completion of the review, please have available working papers and/or reports summarizing revenues, expenditures, and account balances. Attached is a Document and Information Request that lists the documents we will need for our review. We request that these documents be available at the start of the fieldwork. We may request additional information and documentation throughout the course of the review.

An entrance conference has been scheduled for October 24, 2016, at 1:00 p.m. at 3130 N. Fresno Street, Fresno, California. We will begin fieldwork after the entrance conference. We will appreciate it if workspace and the appropriate contact personnel are made available to the staff at that time. We anticipate completing the fieldwork in approximately six to eight weeks.

Thomas W. Birmingham, General Manager  
October 17, 2016  
Page 2

If you have any questions or require additional information, please contact Christopher Lek, Interim Chief, Local Government Audits Bureau, by telephone at (916) 284-0120 or by email at [clek@sco.ca.gov](mailto:clek@sco.ca.gov).

Sincerely,



JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/am

17542

Attachment

cc: Don Peracchi, Board President  
Westlands Water District  
Bobbie Ormonde, Director of Finance and Administration  
Westlands Water District  
George Lolas, Chief Operating Officer  
State Controller's Office  
Christopher Lek, Interim Bureau Chief  
State Controller's Office  
Hitomi Sekine, Bureau Chief  
State Controller's Office  
Efren Loste, Audit Manager  
State Controller's Office  
Michael Cheng, Auditor-in-Charge  
State Controller's Office

## ATTACHMENT

### DOCUMENT AND INFORMATION REQUEST

- Schedule of state and federal funding received/spent during the review period
- Contract agreements for the above funding
- District's accounting/administrative policies and procedures
- General ledger, journals, and chart of accounts
- Summary schedules of revenues, expenditures, and account balances
- Independent audit and other audit reports
- Organization chart
- Other pertinent documents relating to the review



## **Press Release**

### California Water District to Pay Penalty for Misleading Investors

#### **FOR IMMEDIATE RELEASE**

**2016-43**

*Washington D.C., March 9, 2016* — The Securities and Exchange Commission today charged California's largest agricultural water district with misleading investors about its financial condition as it issued a \$77 million bond offering.

In addition to charging Westlands Water District, the SEC charged its general manager Thomas Birmingham and former assistant general manager Louie David Ciapponi.

According to the SEC's order instituting a settled administrative proceeding:

- Westlands agreed in prior bond offerings to maintain a 1.25 debt service coverage ratio, which is a measure of an issuer's ability to make future bond payments.
- Westlands learned in 2010 that drought conditions and reduced water supply would prevent the water district from generating enough revenue to maintain a 1.25 ratio.
- In order to meet the 1.25 ratio without raising rates on water customers, Westlands used extraordinary accounting transactions that reclassified funds from reserve accounts to record additional revenue.
- Birmingham jokingly referred to these transactions as "a little Enron accounting" when describing them to the board of directors, which is comprised of Westlands customers.
- When Westlands issued the \$77 million bond offering in 2012, it represented to investors that it met or exceeded the 1.25 ratio for each of the prior five years.
- Not only did Westlands fail to disclose that wouldn't have been possible without the extraordinary 2010 accounting transactions, but also omitted separate accounting adjustments made in 2012 that would have negatively affected the ratio had they been done in 2010.
- Had the 2010 reclassifications and the effect of the 2012 adjustments been disclosed, Westlands' coverage ratio for 2010 would have been only 0.11 instead of the 1.25 reported to investors.
- Birmingham and Ciapponi improperly certified the accuracy of the bond offering documents.

Westlands agreed to pay \$125,000 to settle the charges, making it only the second municipal issuer to pay a financial penalty in an SEC enforcement action. Birmingham and Ciapponi agreed to pay penalties of \$50,000 and \$20,000 respectively to settle the charges against them.

“The undisclosed accounting transactions, which a manager referred to as ‘a little Enron accounting,’ benefited customers but left investors in the dark about Westlands Water District’s true financial condition,” said Andrew J. Ceresney, Director of the SEC Enforcement Division. “Issuers must be truthful with investors and we will seek to deter such misconduct through sanctions, including penalties against municipal issuers in appropriate circumstances.”

The SEC’s order finds that Westlands, Birmingham and Ciapponi violated Section 17(a)(2) of the Securities Act of 1933 and must cease and desist from future violations. They neither admitted nor denied the findings.

The SEC’s investigation was conducted by Brian P. Knight, Creighton L. Papier, Monique C. Winkler, and Deputy Chief Mark R. Zehner in the Municipal Securities and Public Pensions Unit with assistance from John Yun in the San Francisco office.

###

## **Related Materials**

- [SEC order](#)



**BETTY T. YEE**  
**California State Controller**

February 16, 2017

Thomas W. Birmingham, General Manager  
Westlands Water District  
3130 North Fresno Street  
Fresno, CA 93703

Dear Mr. Birmingham:

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The SCO performed this review pursuant to Government Code section 12410 which requires the Controller to "...superintend the fiscal concerns of the state. The Controller shall audit all claims against the state, and may audit the disbursement of any state money, for correctness, legality, and for sufficient provisions of law for payment."

The objective of our review was to evaluate the district's system of internal accounting and administrative controls, relating to state funds, and determine whether the district accounted for and expended its state funds in accordance with Government Code section 12410.

Based on our preliminary analytical procedures performed and inquiries made, nothing came to our attention that identifies concerns related to the use of the State Revolving Fund Loan Program; therefore, we will not conduct further review on the Loan Program at this time. However, a follow-up review might be conducted later.

We did not audit the district's financial statements. We limited our review scope to planning and performing review procedures necessary to obtain limited assurance that the district accounted for and expended its state funds in accordance with Government Code section 12410. Our review is not intended to and does not constitute an audit performed in accordance with applicable grantor's requirements for the above-mentioned state funds. Therefore, this review was not sufficient in detail to express an opinion on the district's compliance with applicable funding provisions for the loans. Accordingly, the SCO does not express such an opinion.

We thank the district staff and management, who were helpful throughout our review process.

Thomas W. Birmingham, General Manager  
February 16, 2017  
Page 2

If you have any questions or require additional information, please contact Efren Loste, Interim Chief, Local Government Audits Bureau, by telephone at (916) 324-7226 or by email at [eloste@sco.ca.gov](mailto:eloste@sco.ca.gov).

Sincerely,



JEFFREY V. BROWNFIELD, CPA  
Chief, Division of Audits

JVB/lr

17791

cc: Don Peracchi, Board President  
Westlands Water District  
Bobbie Ormonde, Director of Finance and Administration (via email)  
Westlands Water District  
Efren Loste, Interim Bureau Chief  
Division of Audits  
State Controller's Office